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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA
Legislature



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, MARCH 17, 1997
2:10 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, MARCH 17, 1997

2:10 P.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

SENATE BUILDING

STATE OF CALIFORNIA

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STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

MONDAY, MARCH 17, 1968

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Reported by

Robert J. Black
The above report

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

CAROLYN P. ARNOLD, Member
Industrial Welfare Commission

ASSEMBLYMAN ROY ASHBURN

JULIANNE BROYLES
California Chamber of Commerce

TOM RANKIN
California Federation of Labor, AFL-CIO

MARVIN ARMAS, President
Kern, Inyo, and Mono Counties Central Labor Council

MATT MCKINNON, Secretary-Treasurer
California Conference of Machinists

BARRY BROAD
United Food and Commercial Workers
Amalgamated Transit Union
Engineers and Scientists of California

LOUIS BARNETT, Member
California Unemployment Insurance Appeals Board

INDEX

Page

Proceedings 1

Governor's Appointees:

CAROLYN (TERRY) P. ARNOLD, Member
Industrial Welfare Commission 1

Background and Experience 1

Introduction and Support by
ASSEMBLYMAN ROY ASHBURN 1

Witness in Support:

JULIANNE BROYLES
California Chamber of Commerce 3

Witnesses in Opposition:

TOM RANKIN
California Labor Federation, AFL-CIO 4

Questions by SENATOR LEWIS re:

Replacing Mandated Daily Overtime
with Federal Standards 6

Effect on Labor Union Contracts 7

Questions by SENATOR BRULTE re:

Clarification of Previous
Statement regarding Vote to
Eliminate Daily Overtime 8

Vote of Employees 8

Questions by SENATOR LEWIS re:

Why the Two-thirds Threshold 9

Questions by SENATOR BRULTE re:

IWC's Adoption of Federal Law 9

No Problem with Two-thirds
Vote of Employees 10

Current Threshold Needed to Approve
Union Contract 10

1 Questions by SENATOR AYALA re:

2 Interpretation of IWC's Mission 11

3 Support for Minimum Wage 12

4 Questions by SENATOR HUGHES re:

5 Cutting out Senior Citizen Discounts
6 at Appointee's Restaurants 13

7 Saddened by Lack of Senior Citizen
8 Discounts 14

9 Achievements in Past Five Weeks to
10 Promote Mission of IWC 16

11 Questions of MR. RANKIN by SENATOR BRULTE re:

12 IWC Vote was to Take Testimony and Have
13 a Study, or to Eliminate 8-hour Work Day 16

14 Further Witnesses in Opposition:

15 MARVIN ARMAS, President
16 Kern, Inyo and Mono Counties Central
17 Labor Council 18

18 Questions by SENATOR BRULTE re:

19 Number of Members Affected by
20 IWC's Ruling 19

21 How Do Nonunion Workers Get
22 Flexible Work Weeks 19

23 Questions by SENATOR LEWIS re:

24 Reasons for Criticism that Appointee
25 Was not Open to Compromise 20

26 Response by MS. ARNOLD 22

27 MATT MCKINNON, Secretary-Treasurer
28 California Conference of Machinists 23

BARRY BROAD
United Food and Commercial Workers
Amalgamated Transit Union
Engineers and Scientists of California 26

Closing Statement by Appointee 29

1	Request by CHAIRMAN LOCKYER to Withhold Action	
2	on Confirmation until Return of Chair	31
3	Governor's Withdrawal of Nomination	49
4	LOUIS BARNETT, Member	
5	California Unemployment Insurance Appeals Board	31
6	Background and Experience	32
7	Questions by SENATOR HUGHES re:	
8	Position on Efforts to Raise	
9	Unemployment Insurance Benefits	34
10	Questions by CHAIRMAN LOCKYER re:	
11	Closing of Offices	35
12	Number of Consolidation Hearing	
13	Facilities	36
14	Oakland Office	37
15	Use of Appeal Forms	40
16	Other Sources of Personal Income	42
17	Questions by SENATOR BRULTE re:	
18	Employment of Wife by SENATOR LESLIE	43
19	Questions by SENATOR AYALA re:	
20	Recent Appointment of Executive Director	44
21	Rising Caseloads and Fewer Offices	46
22	Appeals Handled by Phone	46
23	Change in Chain of Command at Board	47
24	Statement by CHAIRMAN LOCKYER of Positive	
25	Recommendation from SENATOR DAVID ROBERTI	47
26	Motion to Confirm	47
27	Committee Action	48
28	Termination of Proceedings	49
	Certificate of Reporter	50

P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: Item two, Carolyn Arnold, member of the Industrial Welfare Commission.

Good afternoon.

MS. ARNOLD: Good afternoon, Mr. Chairman, honorable Members of the Commission.

CHAIRMAN LOCKYER: Did you want to start with any kind of comment? Sometimes people do; sometimes they don't. It's up to you.

MS. ARNOLD: Why don't I keep it extremely brief. You've already had a long afternoon, and just kind of introduce myself to you, and let you know what I've done.

My name is Carolyn Arnold; everyone calls me Terry. I'm 54 years old. I started working when I was 14 years old.

I was a registered nurse until 1981, when my husband and I went to Bakersfield and bought four Burger King restaurants, built them up to fifteen, split assets with our partners. We currently own sixteen restaurants.

After that, I am just open to any questions from you.

CHAIRMAN LOCKYER: Maybe just ask for some testimony for a bit and let Members focus on their materials.

ASSEMBLYMAN ASHBURN: Mr. Chairman, Members, I'm Assemblyman Roy Ashburn from the 32nd District, which includes Bakersfield.

I was going to say that I knew a lot about Terry

1 Arnold until I looked at your agenda today and realized that
2 this is Carolyn P. Arnold that is before you. I've known --

3 CHAIRMAN LOCKYER: She changed her name.

4 ASSEMBLYMAN ASHBURN: Apparently so, and I wasn't
5 aware.

6 I've had the privilege of knowing Terry Arnold
7 for a long time. She was a very frequent visitor to the Board
8 of Supervisors in Kern County and is an outstanding individual.

9 I come here today simply to lend support to her
10 confirmation to this important board. She is a very astute
11 business person. And I think when you take a look at the person
12 that is before you, and not so much one particular issue that
13 may be pending or generating more interest than others, you will
14 find that this is a person who worked her way up, as they say,
15 the hard way, who worked hard, and who now has a business of 300
16 employees, and has operated that business for the past 16
17 years, and I would say has great respect from her employees.

18 I wish that the employees were here to speak on
19 her behalf, because I think they would tell you the true story
20 of Terry Arnold.

21 Also, Terry has a very unique ability to express
22 herself, and to give clarity to issues. I have known her to be
23 very, very fair, and very clear in the way in which she
24 considers matters and renders her position and decision.

25 And it seems to me altogether fitting that on
26 this day, when the Capitol pauses to honor outstanding women,
27 this is the day in which we honor outstanding women throughout
28 California, that you have before you for confirmation a truly

1 outstanding woman.

2 I would ask for your favorable consideration of
3 her confirmation to the Industrial Welfare Commission.

4 Thank you, Mr. Chairman.

5 CHAIRMAN LOCKYER: Thank you, Assemblyman.

6 Are there others present who would wish to
7 comment on behalf of Ms. Arnold.

8 MS. BROYLES: Good afternoon, Mr. Chairman,
9 Members of the Committee.

10 I'm Julianne Broyles from the California Chamber
11 of Commerce.

12 We do strongly support Carolyn's confirmation as
13 an employer member to the Industrial Welfare Commission. She's
14 a capable and energetic woman that I've had the pleasure of
15 working with over the last few years on a variety of issues. I
16 think she's admirably suited to fill the employer position.

17 She has pointed out when she was speaking before
18 that she has managed to balance both. She spent 16 years as an
19 employer and 17 years as an employee, and I feel it would help
20 her bring the balance that we require of our members on the
21 Industrial Welfare Commission if she is actually confirmed by
22 this Committee.

23 We hope the Committee will let her serve. She's
24 only served five weeks prior to being called up for her
25 confirmation today, her confirmation hearing.

26 Her only vote that she's actually cast has been
27 to narrow the choices on what direction overtime reform is taken
28 by the Industrial Welfare Commission.

1 Again, the Chamber does strongly support her
2 confirmation and hope you'll give her your favorable
3 consideration.

4 Thank you.

5 CHAIRMAN LOCKYER: Thank you.

6 Is there anyone else that wishes to comment in
7 support of the confirmation question.

8 I guess it's appropriate to take some opposition
9 testimony now, and let them talk a little before we have any
10 questions.

11 If Members want to interrupt with questions, I
12 don't want to cut you off.

13 MR. RANKIN: Good afternoon. Tom Rankin,
14 representing the California Labor Federation.

15 We're dealing here with a confirmation to what I
16 would characterize as a failed commission. The IWC is given the
17 duty under statute, it's even mentioned in the Constitution, of
18 protecting the workers of California.

19 It's failed to fulfill its duty. It avoided
20 raising the minimum wage for nine years, until the federal law
21 and Proposition 210 forced an increase.

22 Instead, it's spent a large part of its time
23 attacking overtime pay provisions. It's become, I guess you
24 could say, overly political while it's forgotten its purpose.

25 I would argue that the current appointee in a lot
26 of ways personifies these problems with the IWC. At her first
27 meeting, without hearing any of the testimony which the IWC had
28 collected on the issue of daily overtime, she voted yes on a

1 proposal by the Chair of the Commission to totally eliminate
2 daily overtime in the State of California.

3 This happened -- this vote was taken at the end
4 of a long process which started, actually, when the Governor, in
5 September of 1995, told the IWC that he wanted to eliminate
6 daily overtime in the State of California. Whereupon, the
7 employers responded with petitions to the IWC, saying that in
8 five of the wage orders, covering approximately 8 million
9 working people in the state, daily overtime should be
10 eliminated.

11 Prior to this, the normal petition process of the
12 IWC had not been taken advantage of by employers. So, it really
13 basically was a political move in the first place.

14 One of the statutory obligations of the IWC is to
15 conduct studies on wages and working conditions of California's
16 workers. It's supposed to, I would say from reading the
17 statute, provide itself with independent data upon which it
18 would base its decisions. And then, when it has the data, the
19 criteria it's supposed to use to make its decisions on matters
20 such as the one before it, daily overtime, is to decide whether
21 or not the current regulation in this case would be prejudicial
22 to the health and welfare of employees of the State of
23 California.

24 It took that vote without any collection of
25 independent evidence. It took that vote without hearing any
26 evidence from employers as to the economic impact of removing
27 daily overtime from about 8 million -- daily overtime
28 protections from about 8 million workers. And it took that

1 action in spite of considerable evidence from employee
2 representatives as to the cost of this change to them, and as to
3 the effect on their jobs and on the potential for losing their
4 jobs because they couldn't get child care if they were forced to
5 work 12 hours a day. This is a major issue to the workers of
6 the California.

7 And what the current appointee did is
8 inexcusable. She voted to eliminate daily overtime without even
9 hearing any of the evidence.

10 I also understand that she is philosophically
11 opposed to government intervention in wages. Now, how can
12 someone who holds these views serve as a Commissioner of
13 Industrial Welfare in the State of California when the
14 Commissioners are required by law to protect the interests of
15 the working people of the State of California?

16 I would respectfully request that the
17 confirmation be denied.

18 SENATOR LEWIS: I have a question.

19 Can you just give me a little background here?
20 Now, she was a member of the Commission, and she voted to
21 overturn mandated daily overtime. Was that to replace that with
22 going to the federal system that's currently, I think, in 47
23 different states?

24 MR. RANKIN: She voted to eliminate daily
25 overtime and to simply have overtime after 40 hours a week,
26 which is FLSA standard, yes.

27 SENATOR LEWIS: And that's the current law in 47
28 other states?

1 MR. RANKIN: Yes, and it overturns a law that's
2 been -- or rules that have been in effect in California since
3 the early part of the century for women, and since 1980 for
4 men. And in 1980, when that regulation on daily overtime was
5 extended to men, what happened? Men started working fewer
6 hours, but they made the same amount of pay.

7 What will happen if this is eliminated in the
8 State of California, at a time when we're putting hundreds of
9 thousands of people into the labor market from the welfare rolls
10 is, unemployment will go up. Because one of the functions of
11 daily overtime and overtime regulations is to spread the work
12 around. If you take away that disincentive from employers, they
13 won't hire new people. They'll just keep people working longer
14 hours.

15 That wasn't even considered by the Industrial
16 Welfare Commission when it made its decision.

17 SENATOR LEWIS: Despite her ruling, does that
18 affect ongoing labor contracts?

19 MR. RANKIN: Labor contracts -- the way the
20 Industrial Welfare Commission orders work is that employees who
21 are affected in these five wage orders have the ability, by a
22 two-thirds vote in all of those wage orders, to say we want a
23 ten-hour day, four 10s; two-thirds vote of the employees.

24 If there's an union contract, which is voted on
25 when employees ratify it after it's negotiated, there's an
26 exemption from the IWC orders on daily overtime.

27 The principle is that employees have a choice.
28 Either they vote through the IWC procedures, or they vote on the

1 union contract.

2 SENATOR BRULTE: Maybe you need to help me. Walk
3 me through this again.

4 First of all, I want to make sure for the record,
5 you didn't mean to say at the beginning she voted to eliminate
6 daily overtime pay for all California workers, because that --

7 MR. RANKIN: For about 8 million California
8 workers who are covered by those five IWC orders.

9 SENATOR BRULTE: And under no circumstances,
10 then, would they be able to receive daily overtime pay? I want
11 the record to just be reflective of that.

12 MR. RANKIN: Under the proposal that she voted
13 on, there would be no daily overtime for these employees. There
14 would be overtime only after 40 hours in a week.

15 In other words, an employee could be required by
16 his or her employer to work 40 hours straight without overtime
17 pay.

18 SENATOR BRULTE: Now under the IWC order, then,
19 it allowed two-thirds --

20 MR. RANKIN: The IWC orders have a voting
21 procedure, and they all have a voting procedure, and they allow
22 for at least employees to vote for four 10-hour days without
23 daily overtime.

24 SENATOR BRULTE: And the employees can vote for
25 that?

26 MR. RANKIN: The employees, by a two-thirds vote
27 of the employees, they can decide that the employees in a
28 certain work unit -- and the way it works is, the employer gets

1 the decide what the work unit is -- and if those employees
2 decide they want four 10s, they can have four 10s if two-thirds
3 want it.

4 SENATOR LEWIS: Why is there a two-thirds
5 threshold? What's magical about the two-thirds?

6 MR. RANKIN: Well, the IWC adopted that many
7 years ago, and I think the basic idea was that they wanted to
8 protect the workers, and to make sure -- like you have a
9 two-thirds vote on your budget here -- that there was enough
10 consensus among the workers before they went to a four 10s,
11 because it could affect some people severely.

12 If you are a single parent with a child, and
13 can't find child care for more than eight hours a day, and
14 suddenly your work schedule is changed to ten hours a day, you
15 have a hard decision to make.

16 SENATOR LEWIS: Conversely, if you're an employee
17 that would prefer to work four ten-hour days, and your company
18 won't allow you because of the mandated overtime, that affects
19 you adversely as well.

20 MR. RANKIN: The problem is, at least the way it
21 works now, is that two-thirds of the employees have to go along
22 with it.

23 Under the federal law, for the 40 hours, the
24 employer just has total decision making power. The employees
25 have no rights.

26 SENATOR BRULTE: Did the IWC adopt the federal
27 law, or did they allow the two-thirds vote.

28 MR. RANKIN: Well, the IWC -- the two-thirds vote

1 requirement came a long time ago. What they're trying to do now
2 is eliminate any vote of employees and simply say there's no
3 daily overtime.

4 The only obligation on employers in these five
5 wage orders would be to pay overtime after 40 hours in a week,
6 which is the federal requirement.

7 SENATOR BRULTE: So, you don't object to a
8 two-thirds vote of the affected employees?

9 MR. RANKIN: No, as a matter of fact, we have a
10 couple bills in, one by Senator Solis and one Assemblyman Knox,
11 which would preserve that requirement.

12 SENATOR BRULTE: But you are concerned about the
13 one-third that are not --

14 MR. RANKIN: We also have in that bill a
15 requirement that the employer be required to provide reasonable
16 accommodation for those employees who had problems working a
17 longer workday, yes. We are concerned with those one-third.

18 SENATOR BRULTE: What's the current threshold to
19 approve a union contract?

20 MR. RANKIN: It's, generally speaking, a
21 majority.

22 SENATOR BRULTE: Not two-thirds?

23 MR. RANKIN: Not two-thirds, but there's a big
24 difference, as you should know.

25 The union has meetings which are basically
26 democratic forums.

27 In the IWC procedures, the employer decides -- if
28 the employer wants to have his employees or her employees work

1 four 10s, the employer can go to the employees and say, this is
2 the schedule I propose for you, to work four 10s, and I want you
3 to vote on it. The employer conducts the election; the employer
4 determines which employees vote. It's not exactly a democratic
5 procedure.

6 SENATOR AYALA: Question.

7 SENATOR LEWIS: Senator Ayala.

8 SENATOR AYALA: Ms. Arnold, what is your
9 interpretation of the IWC's mission and your obligation to
10 provide for the general welfare of the employees?

11 MS. ARNOLD: The IWC's mission is just that, is
12 to provide for the general welfare of the employees.

13 Some of the -- one of the things I would like to
14 point out that my vote was not to eliminate eight-hour overtime.
15 It was to proceed with hearings on following the federal labor
16 standards.

17 As of that vote, nothing has changed. All we are
18 doing is looking into the federal labor standards and proceeding
19 with hearings. And my mind is still open, as is everyone else's
20 on that Board.

21 You're absolutely right, it is what 47 other
22 states follow.

23 One of the things that has gotten the federal law
24 popular, or looking into the federal law as opposed to the
25 overtime after eight hours, is the demand of employees. Even in
26 the restaurant business, I will often have a student who wants
27 to work if they're off four days before a semester starts, wants
28 to work more hours, and I can't let them do that because it

1 would take them into overtime. Instead of working for the four
2 days when they're living at home and get the money together for
3 books or whatever, I cannot accommodate it.

4 A mother who has to leave work early wants to
5 make the time up on another day. I can't accommodate them.

6 That also is the problem with the two-thirds
7 vote, is that it does not, unless two-thirds people think they
8 may need this benefit, you can't offer it for one. And very
9 often, especially in my business -- please understand, the
10 restaurant business is made up of day parts. And most of my
11 employees don't work 40 hours a week, but I cannot accommodate
12 those who want to either make up time or work extra time when
13 they can because of the law.

14 SENATOR AYALA: Do you support the minimum wage
15 programs or not?

16 MS. ARNOLD: Sir, I pay the minimum wage.

17 SENATOR AYALA: You have to, but do you support
18 it?

19 MS. ARNOLD: No, sir, I do not. I am on the
20 record as feeling very strongly.

21 SENATOR AYALA: Let me read to you what the
22 Industrial Welfare Commission's all about. Its purpose, as
23 described in the State Constitution, is to provide for a minimum
24 wage and for the general welfare of the employees, so you're on
25 the wrong commission.

26 [Applause.]

27 SENATOR BRULTE: I want to just clear something
28 up.

1 SENATOR LEWIS: Let me admonish the audience that
2 no demonstrations are allowed.

3 Senator Hughes.

4 SENATOR HUGHES: Thank you very much.

5 Is it true -- now, I was told this, and you
6 correct me if I'm wrong -- in 1996, you had a Burger King
7 franchise and you displayed some signs there stating that you
8 would no longer have senior citizen discounts?

9 MS. ARNOLD: Yes, ma'am. We had to drop our
10 senior citizen discounts.

11 SENATOR HUGHES: Why?

12 MS. ARNOLD: Because we are in a business of
13 margins. We had to cut out many of the discounts.

14 Please understand, we've been running 99 cent
15 Whoppers now for close to three years. We had to cut out many
16 of the discounts.

17 As the cost of doing business increases, and when
18 the minimum wage started increasing at that rate -- and please
19 let me explain.

20 The minimum wage was an excellent idea when it
21 started back in the days when my 14-year-old father went in the
22 coal mines, it was needed.

23 We have raised the minimum wage now to the
24 point -- in the 16 years that I've been in Bakersfield, we've
25 gone from paying premium rates for 18 year olds to not having
26 to, because they're all there. I'm not saying that it causes
27 people to drop out of school, but it certainly is not the
28 deterrent.

1 With the discounts we offer in our restaurants,
2 when you have a seven percent increase in your cost of doing
3 business, you cannot continue to offer discounts.

4 SENATOR HUGHES: You know, when you started to
5 speak initially, you sounded as though you were sympathetic
6 towards mothers with children --

7 MS. ARNOLD: I am.

8 SENATOR HUGHES: -- towards people who could only
9 work part-time and could not work full-time, and you wanted to
10 make opportunities for them. And that was the reason that you
11 were giving as being against the overtime for working people.

12 Now, on the other end of the scale, you say yes,
13 I cut out the senior citizen discount. Let me tell you, if
14 you're lucky, everybody in this room will become one, one day.
15 It's a privilege and an honor to be a senior citizen.

16 I don't think I understand how you could take
17 such a cold, calculated statement like that. Why is it that so
18 many, many businesses offer senior citizen discounts, maybe not
19 right out, but they have at least a day a week, or something?
20 And you don't think it's good business to have senior citizen
21 discounts at an inexpensive place like Burger King, of all
22 places, which doesn't have the best nutritious food for seniors
23 to eat anyway.

24 I'm shocked and saddened.

25 MS. ARNOLD: Senator Hughes, I'm sorry if I
26 shocked you, but discounts that are offered are promotional and
27 are factored into our cost of doing business.

28 My restaurant business is what it is. I've never

1 said that I am a health food restaurant; although, we did in
2 fact try it one time, to offer the carrot sticks, celery sticks
3 that people said they wanted in our business, and no one bought
4 them.

5 As far as the senior discounts are concerned, we
6 have moved heaven and earth to keep from moving our prices. As
7 a matter of fact, our Whopper costs less than it did 16 years
8 ago, when I came to Bakersfield.

9 We had to make a decision, if we were going to
10 offer special discounts along with those prices, of how we were
11 going to deal with the increased cost of doing business.

12 It pained us to do that. I do not enjoy doing
13 that. But, you do what you have to do because the bills
14 continue.

15 SENATOR HUGHES: Business only thrives as well as
16 their workers are able to produce and support that business.

17 I think that it was Senator Ayala that started to
18 read to you part of the Labor Code. I'd like to quote it to
19 you. It's your charge to foster, promote and develop the
20 welfare of wage earners of California, to improve their working
21 conditions, and to advance their opportunities for profitable
22 employment.

23 What you have done in your time as a
24 Commissioner? I'm not talking about '96. How long have you
25 been a Commissioner now?

26 MS. ARNOLD: Five weeks.

27 SENATOR HUGHES: What have you done in those five
28 weeks? What one thing have you done? What have you voted for

1 that moves in the direction of fulfilling the obligations that
2 you had when you took the oath to become a Commissioner? You
3 agreed to be a productive Commissioner. What have you done now
4 in those five weeks?

5 MS. ARNOLD: I think that vote is very obvious.
6 I did vote to pursue and to take testimony on following the
7 federal labor standards in the state of California, along with
8 the other states out there.

9 The reasoning behind that is that I think
10 California needs competitive [sic]. It has an opportunity of
11 bringing more jobs.

12 You're still paying an employee after 40 hours a
13 week, but you're giving them the ability to, in many instances,
14 work those 40 hours a week.

15 SENATOR HUGHES: I didn't hear anything that you
16 did.

17 SENATOR LEWIS: Senator Brulte.

18 SENATOR BRULTE: I want to clear this up again.

19 Tom, you said earlier that this appointee voted
20 to eliminate the eight-hour work day.

21 This appointee has now said that she voted to
22 take testimony and have a study.

23 I'd like the record to reflect which is accurate.
24 For my own edification, I'd just like to know which is correct.

25 MR. RANKIN: Let me explain the procedure.

26 When the Governor told the IWC back in December,
27 '95, that he wanted to eliminate daily overtime, and they're all
28 his appointees, then the normal procedure is, the IWC can begin

1 proceedings on its own motion. And I think they were ready to
2 do that after he had his press conference at the Chamber of
3 Commerce. That was when he was running for President still, and
4 right before he decided not to run any more.

5 Then the employers decided to petition to sort of
6 shore up his request. And after that, when the IWC receives
7 petitions, they hold a number of public hearings to decide
8 whether or not to convene wage boards. Wage boards are made up
9 of half employee and half employer representatives. And
10 they're supposed to use the same standard there, they're
11 supposed to find out -- make a finding that, somehow or another,
12 the present daily overtime was prejudicial to the health and
13 welfare of employees before they convene a wage board.

14 So, what they found was, it may be prejudicial,
15 the word is may, so they convened wage boards in these five wage
16 orders. And those wage boards met over the course of several
17 months. They were half labor, half management. And they
18 deadlocked in every case.

19 And then it went back to the IWC, which had its
20 meeting on January 24th, Ms. Arnold's first meeting, and there
21 was no evidence before them that the current regulations were
22 prejudicial. As a matter of fact, there was a lot of evidence
23 before them that it would have cost employees millions if not
24 billions of dollars if they changed the regulations.

25 But they blithely went ahead without any
26 independent study on their part, without any evidence that this
27 would help employees, and they blithely went ahead and voted to
28 eliminate daily overtime, to put a proposal out -- now they

1 voted on that. Now they have to have three more public hearings
2 before they take a final vote. It's not final yet, but that is
3 their proposal.

4 And they voted on that proposal -- it's
5 interesting, because when they gave their charge to the wage
6 boards, one of things they told the wage boards was, well, you
7 should think about finding a way to give workers more
8 flexibility, at the same time protecting the workers somehow.

9 They forgot all about any protections of the
10 workers when they made their vote on January 24. They just
11 voted to whole sale do away with daily overtime.

12 Yes, they have to have three more public hearings
13 before they take a final vote.

14 SENATOR BRULTE: So, it was an initial vote?

15 MR. RANKIN: It was an initial vote.

16 SENATOR BRULTE: Would you agree with that
17 characterization?

18 MS. ARNOLD: It was a vote to pursue, yes.

19 SENATOR LEWIS: Next witness.

20 MR. ARMAS: My name's Marvin Armas. I'm
21 President of Kern, Inyo, Mono Central Labor Council,
22 Bakersfield, California.

23 I'm here to speak on not appointing Ms. Arnold to
24 the Industrial Welfare Commission. And our findings, both --
25 Ms. Arnold forms an opinion, has her mind made up, is not
26 open-minded, is not open to compromise, and proceeds straight
27 ahead. That's the findings that we have and our council has.

28 SENATOR BRULTE: Question.

1 How many of your members are affected by this
2 ruling or regulation, if we presume it's ultimately adopted
3 without change?

4 MR. ARMAS: If it's openly adopted?

5 SENATOR BRULTE: Without change, how many of your
6 members are affected.

7 MR. ARMAS: Are you saying affected immediately,
8 or to be affected. Every one of them will be affected.

9 Level playing fields are mentioned at the
10 bargaining table daily. And when overtime is not paid by
11 nonunion competitors -- I happen to be an union representative
12 for the United Food and Commercial Workers Union as well as
13 Secretary-Treasurer -- level playing fields are mentioned, and
14 we would have to give on overtime. It's possible that every
15 every AFL-CIO member would be affected eventually.

16 SENATOR BRULTE: Maybe you can walk me through
17 this. I may be missing something here.

18 You currently, your members have the right to
19 negotiate a four 10-hours a day work week -- a four day, 10-hour
20 work week without overtime?

21 MR. ARMAS: Yes, they do.

22 SENATOR BRULTE: And nonunion workers do not get
23 that benefit? They cannot?

24 MR. ARMAS: No, they can.

25 SENATOR BRULTE: How do they do that?

26 MR. ARMAS: The employer usually carves out a
27 segment and offers a certain person -- for instance, a clinic in
28 Bakersfield has a truck driver. I call him a truck driver; he's

1 a nurse that drives a truck, or a medical assistant that drives
2 a truck. He works a four 10-hour day. He's the only one in
3 that unit that works a four 10-hour day, and he has a separate
4 little contract that he signed with his employer.

5 SENATOR BRULTE: How does that affect the playing
6 field that affects your members adversely? If you can't answer,
7 maybe, Barry, you can help me with this.

8 MR. ARMAS: I have four supermarkets in
9 Bakersfield that are nonunion. If they're allowed to work a
10 12-hour day, or a four 10s, or 12-hour days without overtime,
11 and cut them short on the 40-hour work week, in other words,
12 hire many more employees, that market is able to flex better
13 than a union market which is required to pay overtime after
14 eight hours, after six days in a week, after 40 hours in a week,
15 all of the above.

16 SENATOR BRULTE: I'll ask the question again of
17 Barry. I may be missing something there.

18 MR. ARMAS: Okay.

19 SENATOR LEWIS: Can I ask you, you mentioned that
20 Ms. Arnold was not open to compromise. That was one of your
21 criticisms of her.

22 MR. ARMAS: Yes, I did.

23 SENATOR LEWIS: And you made this determination
24 based on her five weeks of being a member of this committee, or
25 does this go back longer than five weeks?

26 MR. ARMAS: No, this starts back -- when I first
27 became acquainted with -- well, actually knew of Ms. Arnold was
28 probably back in 1994. A newspaper article that came out where

1 public employers -- public employees entitled to disability pay,
2 disability retirement pay and still being able to work.

3 Ms. Arnold basically came out in the newspaper
4 there in Bakersfield and said that they didn't offer that in her
5 business, that her employees were entitled to Social Security,
6 workers compensation, and state disability, which are required
7 by law.

8 Later on, she had a letter to the editor
9 basically talking about spending money. I believe it was on
10 Operation Clean Air. Employers with over a hundred employees
11 would be required to, you know, have people either car pool or
12 save gas, work shifts together, and things like that. She came
13 out and basically said that the government shouldn't mandate
14 employers how people get to work.

15 And I first met Ms. Arnold about October,
16 September or October of this year. We debated in front of a
17 high school, civics classes, about 70 students, on the minimum
18 wage, or what I called -- yeah, the minimum wage bill.

19 SENATOR LEWIS: Now, you want to retain the
20 current law. Ms. Arnold has voted to proceed with additional
21 hearings and moving toward the federal standard of 47 other
22 states. You think she's not willing to compromise.

23 What are you willing to compromise?

24 MR. ARMAS: I'm not on the Commission, but I
25 think I could compromise things.

26 SENATOR LEWIS: Well, one of your principle
27 criticisms of her was that she was inflexible and unwilling to
28 compromise.

1 What are you willing to put on the table in terms
2 of moving towards --

3 MR. ARMAS: There's many things that could be put
4 on the table and others.

5 First of all, who would police this. I
6 understand it would be the employer, of course.

7 The second thing is that overtime, if it worked
8 for flexing of the employer and an employee agreed up to four
9 hours a week very possibly, that an employee could work 12 hours
10 without getting overtime in order to make up 40 hours from
11 another day, or what have you.

12 So, there are other ways.

13 SENATOR LEWIS: Ms. Arnold, any comments?

14 MS. ARNOLD: Thank you so much, Senator Lewis,
15 because there are a few things I really would like an
16 opportunity to clear up.

17 It's absolutely right, I am on record about
18 government disability. But that was in response to a massive
19 story that ran in the Bakersfield California about a very --
20 about some very, very clear-cut abuses in the system. And that
21 was my response.

22 The fact that I have hourly employees who are
23 temporary, who are part-time, and who, please God, go on to
24 bigger and better things, is the reason that we cannot provide
25 retirement or anything of this nature.

26 And the point that I had tried to make in that
27 story very hard was that I thought it was unreasonable to expect
28 taxpayers to support a system that allows this sort of abuse.

1 This was not just a clear-cut issue of Terry Arnold discussing.
2 It was a very, very hot issue in Bakersfield at that time.

3 SENATOR LEWIS: Thank you.

4 Any additional questions?

5 SENATOR BRULTE: No, but I just want to tell you,
6 I'm glad you got rid of the healthy food in your
7 restaurant.

8 MS. ARNOLD: It's because no one came to buy it.

9 SENATOR LEWIS: Next witness.

10 MR. MCKINNON: Good afternoon. My name is Matt
11 McKinnon. I am the Secretary-Treasurer of the California
12 Conference of Machinists. We represent some 100,000 union
13 members and retired union members in the State of California in
14 manufacturing air transport, municipal employees, timber, and a
15 number of other industries, automotive.

16 I find it kind of ironic today that we walked
17 into the hearing today. There's a number of members from every
18 reach and every corner of the state that came down today. And I
19 found it ironic, we walked into the hearing today, to be hearing
20 about human rights, the difference between human rights in
21 China, and another part of China where they have Nike plants
22 where children work 16 hours a day.

23 I found it really interesting that now we finally
24 get a chance to talk about human rights in California.

25 Since 1972, workers, manufacturing workers'
26 wages, adjusted for inflation, have been declining, while
27 corporate profits have been rising.

28 And it seems to me that we continue to have

1 operations that are designed to take us to the lowest common
2 denominator. We have opposition to minimum wage, and now we
3 have taken away daily overtime from workers in California.

4 A great deal of difficulty. I think that, given
5 the job insecurity that manufacturing workers have faced in
6 California, the notion should be to discourage anything more
7 than an eight-hour day with overtime, and the notion should be
8 to put as many people to work as possible.

9 If we have lost sight of that in this state, it's
10 time for people to get a wake-up call.

11 Now, there are a number of questions raised here,
12 and there are some answers that maybe some of the others
13 couldn't provide. There was a question asking whether union
14 contracts, or people under union contracts, are impacted by this
15 kind of change.

16 Well, the law hasn't even changed, and there's
17 already been two proposals across the table with Machinist Union
18 employers where they have proposed eliminating overtime language
19 to line up with whatever the law is. So, yes.

20 I think that if you're adding an implication of
21 this kind of change, one of the implications is, you could also
22 disrupt labor-management relations in the unionized
23 environment. I imagine there are those in this state that would
24 like to see that happen, but that is not good for this state
25 either.

26 So, in sum total, given a predisposition on the
27 minimum wage, and given a vote already -- and let's not play
28 games about the 40-hour week stuff, and the state law and 47

1 states. There's a proposal in the federal Congress last year to
2 change it to 160 hours in a one-month period before you paid
3 daily overtime. What we're talking about is cutting workers'
4 pay, and it's being pushed on several different fronts. So,
5 let's not play semantical games about what states have it and
6 what states don't have it.

7 We have a predisposition on a couple of issues
8 here that tell me that this candidate for this position is no
9 where near qualified to represent the workers in this state in a
10 nonpartisan fashion, to take care of the business of the workers
11 of this state.

12 Maybe you want to create a commission that takes
13 care of someone else's interests, but this Commission is about
14 watching after the least of us.

15 If you take the minimum wage discussion, if you
16 take that minimum wage discussion that Senator Hughes raised,
17 let's be honest about that. The senior citizen discounts, those
18 things that were posted were posted politically. They were
19 posted right at the time when there was minimum wage ballot.
20 Let's not kid ourselves what that was about. There was a ballot
21 initiative on the ballot when those were posted in the windows.
22 I recall the day it was done.

23 Frankly, the notion that you had to take away
24 from senior citizens over paying people a quarter an hour more,
25 I think McDonald's just cut the quarter-pounder to 55 cents, and
26 you're charging 99 for the Whopper. So, there's your senior
27 citizen discount, thank you.

28 This is a very, very disturbing direction in this

1 state.

2 Thank you.

3 SENATOR LEWIS: Mr. Broad.

4 MR. BROAD: Mr. Chairman and Members, I'll be
5 brief. Barry Broad on behalf of the United Food and Commercial
6 Workers, the Amalgamated Transit Union, and the Engineers and
7 Scientists of California.

8 I believe quite a lot has been said already, and
9 I won't belabor these points, but let me say this.

10 The proposal to eliminate daily overtime really
11 will affect certain people in this state more than others. Let
12 me explain who.

13 People that are working full-time, 40-hour a week
14 jobs, they get overtime after 40 hours in a week whether they
15 work -- whatever day, whatever time they work over 40, they get
16 overtime. So this is -- this proposal that people that get
17 daily overtime are very often part-time employees, the largest
18 growing segment of the work force, people who work less than
19 full-time.

20 Now, the way overtime laws work, the 40-hour
21 rule, you only get overtime if you work more than 40 hours in a
22 single job. So, this fastest growing segment of the work force,
23 which includes many, many people who work more than one
24 part-time job, can accumulate many hours in the week over 40
25 without getting overtime pay.

26 Who are these people? These people are the
27 working poor. The people that are struggling at the bottom of
28 the wage scale. The people that we're trying to put into the

1 labor market who are on welfare.

2 Many of them are single parents. Many of them
3 are in families where you have more than one parent working, and
4 more than one parent working more than one job to make ends
5 meet. So, these are people that are struggling with the
6 greatest of problems.

7 I ask myself, I am an employer. I employ
8 someone. Do I pay overtime for people if they have to go to the
9 doctor, or do they have to make-up time and all that stuff? No,
10 of course not. Because I'm one of those employers that provides
11 sick leave, and health insurance, and vacation time. Someone
12 needs to do pressing personal business during the work day, they
13 have that leave coming to them. They earn it.

14 But I'm at the higher end of the employers. I
15 have a union contract, in fact, so that my employee has these
16 benefits. There's no question of make-up time, because what
17 you're talking about when you're talking about that issue are
18 employers that don't provide sick leave, don't provide vacation
19 pay. They provide nothing.

20 Now, Ms. Arnold is on the Industrial Welfare
21 Commission to represent employers, the employer interests.
22 However -- and I've rarely come here to oppose an employer
23 representative -- however, there are employers and there are
24 employers. And I think that there are some things, and this has
25 been hit on, some issues that are very, very basic. The minimum
26 wage, overtime, these are matters of consensus in our society.

27 When this administration refused, and the
28 Industrial Welfare Commission refused to raise the minimum wage,

1 the minimum wage was passed overwhelmingly by the voters without
2 much controversy, because the issue is not of controversy.

3 Nevertheless, we have someone here today who's
4 expressed opinions which I think are out of sync with the
5 statutory mandate of the Commission.

6 Whether the person represents the employers,
7 whether the person represents employee interests, or whether the
8 person is the public member, we need to have someone on the
9 Commission, even representing employers, who is comfortable with
10 the basic statutory mission of the Commission, not fundamentally
11 opposed to all that it represents.

12 So, with that, I would join Mr. Rankin in
13 opposition.

14 Thank you.

15 SENATOR LEWIS: Do you have any comment? You
16 want to respond right now?

17 MS. ARNOLD: Not especially.

18 SENATOR LEWIS: Any additional witnesses.

19 SENATOR AYALA: The Chairman has requested that
20 we with hold any action until he gets back here. He'll be
21 back.

22 We do have a Constitutional mandate as it
23 pertains to IWC, and it doesn't appear like this candidate
24 fulfills that mission. She's against what it stands for, and I
25 don't see how we can support that candidate.

26 But the Chairman will be back shortly.

27 SENATOR LEWIS: Would you like to go ahead and
28 make a closing statement at this time?

1 MS. ARNOLD: Yes, I would.

2 I understand the controversy that I probably
3 started here because of points of view that I hold very, very
4 strongly.

5 I made the statement earlier that minimum wage
6 definitely had a time and a place in our society.

7 However, I think we must remember what jobs are
8 currently covered by minimum wage. You can get out of high
9 school and go in the oil fields, and you're not earning minimum
10 wage. Those jobs which pay minimum wage are entry-level service
11 industry jobs. No skills. And they are low on the value chain
12 for the consumer.

13 I am a franchisee. I can charge anything for a
14 Whopper I choose. I can charge 25 cents. I can charge \$2.50,
15 but no one's going to buy it.

16 I'd like to bring that marketing ploys can
17 sometimes be a two-sided sword. The cost of doing business must
18 always be met. It must always be met, and that is constantly
19 bouncing.

20 Anyone who deals in agriculture understand that
21 tomatoes can go from one price to the next. You must always
22 cover your costs.

23 What we try to do with our employees is encourage
24 them, because we are a part-time business, when they fill out
25 their availability schedule, to look into the child care, the
26 transportation to work, and also one other thing: employers'
27 training resource and the adult school.

28 I don't apologize for my stand on minimum wage.

1 Except for one manager in my business, every one of them started
2 off as 15 or 16-year-old kids working for me. The partners, the
3 minor partners I have in my other business used to be my
4 employees.

5 I go out into the schools any time I'm asked, and
6 if I'm not asked frequently enough, I call and I offer. And I
7 tell people, minimum wage will not support you and your
8 children, and it cannot, because those jobs which pay minimum
9 wage are those services and products valued very, very lowly by
10 the consumer, and in those industries with very, very narrow
11 margins.

12 The idea is to get people started, to get them
13 used to work, get a work history, and then move up and on, where
14 they have the opportunities.

15 As far as a 40-hour week, yes, I do look at 47
16 states. We keep reading about all the millions of jobs that
17 have been created. Where are they? Kern County's unemployment
18 rate is 14 percent, and it increases up the Valley.

19 California needs some of those million jobs that
20 are going other places. We need to look very, very, very hard
21 at what makes us different. Why aren't they here? Why don't we
22 have the jobs for people to move into?

23 People of marginal skills and ways to grow -- you
24 can only grow so far in service industries, then you stop
25 becoming a service and convenience, and you become a luxury, and
26 even those jobs diminish.

27 You've been very patient with me. This has not
28 been nearly as bad as I thought it would, and I thank you all

1 very much.

2 SENATOR LEWIS: Thank you, Ms. Arnold.

3 We have a request from the Chairman that we
4 withhold action on your confirmation vote until he returns. So,
5 if you'll be patient with us for just a little bit longer, we'd
6 appreciate it.

7 Thank you.

8 MS. ARNOLD: I can be very patient, Mr. Lewis,
9 but can I move? I feel like I'm in the middle of a stage.

10 SENATOR LEWIS: You're excused.

11 We're moving on with the agenda. Next on our
12 agenda is Lou Barnett for the California Unemployment Insurance
13 Appeals Board.

14 Mr. Barnett, do you have an opening statement?

15 MR. BARNETT: I do have an opening statement and
16 some information for the Members. I can dispense with it. It's
17 about a three-minute statement, if the Committee would rather.

18 I've had the opportunity to meet with Senators
19 Ayala and Brulte previously. I've had the opportunity to meet
20 with the Vice Chairman's staff and Member Hughes' staff as well,
21 and I understood that previously, Senator Lockyer did not have
22 any questions for me.

23 The purposes at this meeting are primarily to
24 address any new questions, or to put any issues on the record
25 that Committee Members make. So, it's your pleasure.

26 I do have a three-minute statement if you would
27 like.

28 SENATOR LEWIS: Let's find out. Because we have

1 two Members of the Committee that are absent right now, probably
2 would be best if you went ahead with your opening statement.

3 MR. BARNETT: Okay, Mr. Vice Chairman, Members of
4 the Committee, it's a pleasure to appear before you today to
5 discuss my service on the California Unemployment Insurance
6 Appeals Board.

7 I've a member of the Board for the past five
8 years, and it's been my pleasure last year-and-a-half to be
9 Chairman of the Committee.

10 The handout that I have provided to you presents
11 an overview of the operations of the California Unemployment
12 Insurance Appeals Board. As you can see, it's an adjudicatory
13 body that decides 200,000 cases a year in the areas of
14 unemployment insurance, state disability insurance, and the tax
15 systems that support those systems. Over 90 percent of our work
16 is UI and paid for with federal funds. The balance are funded
17 from the State Disability Insurance.

18 During my tenure on the Board we've encountered a
19 great fluctuation in our workload. It's gone from 163,000 cases
20 during my first year, up to 290,000 cases, and back now to a
21 projected 203,000 cases in the current year.

22 Since our funding is geared to the work we
23 produce, it has been necessary for us to adjust our staff to
24 this fluctuating workload. In the past two years, we've gone
25 from over 700 full-time equivalent positions to about 540 at the
26 present time. We have done this by the use of permanent
27 intermittent, limited term, and retired annuitant staff that
28 have enabled us to expand and contract our staff in fairly short

1 time without having to lay off permanent staff, with the
2 exception of two individuals, both of whom had other
3 alternatives but chose to elect being laid off.

4 We have managed to adjust to this changing
5 workload with no impact on the quality of our decisions. We
6 continue to have one of the lowest higher level appeal rates in
7 the nation. Even with this lower rate, the caseload for our
8 Board continues to be much greater than for any other state
9 appeals board, due to the fact that we receive two to three
10 times the number of initial appeals that the next largest states
11 have.

12 In terms of timeliness, we continue to exceed the
13 Department of Labor standards with our field decisions,
14 completing work on over 60 percent of our cases within 30 days
15 or less from the date the appeal is filed, and over 80 percent
16 of the cases completed within 45 days of being filed.

17 We have also recently reviewed and updated our
18 precedent decisions to be consistent with state law and with any
19 court decisions that have occurred since we last reviewed them.

20 We've also successfully completed the upgrading
21 of a 14-year-old computer system, at cost of under \$150,000,
22 plus the additional cost for upgrading hardware from obsolete
23 equipment.

24 Thank you for consideration of my appointment. I
25 will be happy to answer any questions, although at this time, if
26 you'd prefer to go back and conclude your other item of
27 business, it's your pleasure.

28 SENATOR HUGHES: Mr. Chairman.

1 CHAIRMAN LOCKYER: Senator Hughes.

2 SENATOR HUGHES: I like many of the things that I
3 heard you say. It sounds as though you're working very
4 conscientiously on your task.

5 But how do you feel about the fact that our state
6 benefits rank below 34 other states? Do you support efforts to
7 raise unemployment insurance benefits?

8 MR. BARNETT: Well, our position is as a
9 quasi-judicial adjudicatory --

10 SENATOR HUGHES: I didn't ask you what our policy
11 was.

12 I said, do you support? I'm talking about you,
13 Louis Barnett, as an individual. Do you support efforts to
14 raise unemployment benefits?

15 I'm not asking for you to speak for the group.
16 I'm asking you to speak for yourself.

17 MR. BARNETT: We would have a conflict of
18 interest. I would even have a conflict of interest in
19 addressing that.

20 To the extent that the amounts paid for either
21 unemployment insurance or disability insurance go up, more
22 people will claim; there will be more appeals, and we will have
23 more business. So, we have a conflict the there of being biased
24 in favor of more work for our agency.

25 With regard to the policy issues of whether
26 unemployment insurance should pay more or less, I gather that
27 there is a robust debate on that issue in this nation.
28 President Clinton has said that the system is a rip-off for

1 employers and does not serve the employees.

2 I don't know what these issues are. These are
3 policy issues. We try to stay away from policy issues because
4 it's our job to adjudicate the decisions that come before us on
5 appeal.

6 SENATOR HUGHES: And you think you're doing an
7 adequate job of doing that?

8 MR. BARNETT: We're doing the best we can,
9 Senator.

10 SENATOR HUGHES: Thank you.

11 CHAIRMAN LOCKYER: Hi, sorry to miss the
12 beginning.

13 MR. BARNETT: I doubt you missed that much.

14 CHAIRMAN LOCKYER: There are some questions that
15 I did want to ask you about.

16 One is, I notice the Board and EDD are
17 contemplating closing some of the offices. I'm a little unclear
18 who really makes the decision.

19 Could you clarify who decides these matters?

20 MR. BARNETT: That would be my pleasure,
21 Senator.

22 First of all, EDD makes their own decisions, and
23 we make our own, with one exception that I will deal with
24 shortly. When a decision is made to close an office, that's
25 generally a Board level decision for us. It will be on the
26 advice of staff, and it will also be in relationship to the
27 fiscal needs of the California Unemployment Insurance Appeals
28 Board.

1 Most of what we spend is for people. We would
2 prefer to protect jobs and employees to the extent that we can,
3 and we have looked at facility consolidations.

4 The one exception is that in a case where we have
5 co-located hearing rooms with EDD. If they close one of those
6 sites, our hearing rooms will be shuttered at the same time.

7 CHAIRMAN LOCKYER: How many of those are there?

8 MR. BARNETT: We have 88 hearings rooms
9 co-located in EDD buildings. We also have approximately 86
10 hearing rooms in our own 11 headquarters sites around the state,
11 or field offices.

12 CHAIRMAN LOCKYER: About half.

13 MR. BARNETT: Then we have another 21 sites with
14 63 satellite hearing facilities, where we do not house staff on
15 a daily basis, but where we're available to the public.

16 We strongly believe that we need to be as
17 available to the public as possible. As EDD moves more and more
18 toward telephone determinations, we become the first contact for
19 someone with the public who has a problem with the system. And
20 we think it would be unfair not to give as many people an
21 opportunity to have an in-person hearing. We believe that
22 that's a better form of due process than a telephonic hearing,
23 so we're trying to keep as much of a presence as possible.

24 We have hearing facilities in our 11 field
25 offices in your district, and in or near Member Ayala's
26 district, which is also adjacent to Member Brulte's district.
27 We have a facility in Orange County which is adjacent to Member
28 Lewis's district, and in Los Angeles. We will do everything we

1 can to protect and keep those open.

2 But ultimately, myself and my Board members
3 would be the final determinators of whether to consolidate or
4 expand a facility.

5 CHAIRMAN LOCKYER: What stage are some of those
6 considerations of consolidations?

7 MR. BARNETT: Would you like to pick a particular
8 office?

9 CHAIRMAN LOCKYER: Well, I don't want to be
10 overly parochial, but Oakland.

11 [Laughter.]

12 MR. BARNETT: You know, if I speak forthrightly
13 here, I'm probably going to step on somebody's toes, but let me
14 just go ahead and do that.

15 There's no polite way to fuzz up the issue around
16 the Oakland office. We have a facility in Oakland in the Kaiser
17 Building. We're paying a nice hefty rent for it, but there's a
18 State building opening there. It's the Governor's policy that
19 State buildings will be filled. It's the policy of General
20 Services to implement that.

21 If we are to move to the State building in
22 Oakland, our cost of rent, due to the fact that it's at a higher
23 rate than what we're paying now, and that they want us to take
24 more square feet than we need, would increase our rent by about
25 \$100,000.

26 CHAIRMAN LOCKYER: You mean the State building
27 site is more?

28 MR. BARNETT: Yes, the State building site is

1 more.

2 CHAIRMAN LOCKYER: Because of larger space, or
3 whatever?

4 MR. BARNETT: Larger space and higher per square
5 foot rent. If we were to fund --

6 CHAIRMAN LOCKYER: Their policy isn't to waste
7 money; is it?

8 MR. BARNETT: I believe the argument is that the
9 long term benefits to us will be better. That your rates --

10 CHAIRMAN LOCKYER: What are they?

11 MR. BARNETT: That your current rates in the
12 market in Oakland are abnormally low, and that over time, we
13 will benefit by being in there, even though the short-run costs
14 will be higher. That's not my business.

15 CHAIRMAN LOCKYER: It's not mine, either.

16 MR. BARNETT: So, there're probably wise people
17 on both sides.

18 CHAIRMAN LOCKYER: But my point is, either of
19 those choices doesn't mean you would have to close an Oakland
20 office; does it?

21 MR. BARNETT: Here's what would cause us to close
22 an Oakland office. If we were given the choice of moving in and
23 then having to lay off staff or make financial reductions so
24 that we could not perform our function to serve the public in
25 that area, we would have to make the decision between a more
26 expensive facility and moving out of Oakland, maybe having a
27 satellite facility south county, north of Oakland.

28 You can't shutter a facility in one place and

1 move right across the street, as you are probably aware under
2 state regulations, but we would have to continue to serve the
3 public. So, we could continue to do that through satellite
4 facilities that were cheaper, but not have a major facility
5 there. However --

6 CHAIRMAN LOCKYER: I'm not sure when you say
7 satellite services.

8 MR. BARNETT: A hearing facility where we don't
9 house people, administrative law judges and support staff, on a
10 day-in day-out basis. It would be a store-front office facility
11 of some kind where our judges would go, and they would hear the
12 cases that were presented to them, and then they will return to
13 an office, maybe in San Francisco.

14 But let me tell --

15 CHAIRMAN LOCKYER: You know what I don't
16 understand? I haven't done this a lot, but a couple of times I
17 just wandered through the Oakland facility.

18 If you go into a judge's office, it's just stacks
19 and stacks of files everywhere. I guess because they have
20 inadequate support staff.

21 I don't know how they would -- I guess they'd
22 leave all those back home and take the right file to go to the
23 store-front?

24 MR. BARNETT: Right. They would take the files
25 for those cases with them.

26 But cutting to the chase here, we are in deep
27 negotiations with the Employment Development Department. We
28 believe that we are going to be able to come to a resolution of

1 this matter in a way that will be favorable to General Services
2 and favorable to yourself and the constituents of your
3 district. That is, we will be able to continue to keep an
4 office there and probably move into the State building without
5 having to make staff reductions at our agency to pay for it.

6 CHAIRMAN LOCKYER: It's sort of vague and
7 general, and I guess that's just the nature of these matters.

8 MR. BARNETT: It would be more -- I would prefer
9 to advise you or your staff afterwards of the more blunt
10 specifics of the negotiations if I could, but I think you'll be
11 satisfied.

12 CHAIRMAN LOCKYER: I think maybe similar
13 questions could be asked by people from all around the state
14 with respect to 170 or so different sites, and the satellites,
15 and what kind of services are available.

16 I only know just because of my own awareness of
17 the drive times and all, if people from Oakland have to go San
18 Francisco for a hearing, or to do the routine work with the
19 Board, that's quite an inconvenience.

20 I hope that isn't where this is going to all wind
21 up.

22 MR. BARNETT: We hope not.

23 CHAIRMAN LOCKYER: I guess there are some
24 suggestions that have been made. You might, perhaps, briefly
25 comment on any of these: to allow more time to file an appeal,
26 to facilitate the work. Another suggestion has been that there
27 be just like an appeal form that people would get with a denial
28 so they would just routinely be able to notice in that, in or

1 not, rather than to have knowledge to go and ask for one.

2 Have you heard those kind of administrative
3 procedural debates? And what's your view about them?

4 MR. BARNETT: I have heard some discussion of
5 that.

6 Anything that facilitates people being able to
7 make an appeal will generate for business for our agency. We
8 have no problem with having that opportunity to continue to
9 employ our people.

10 But we don't interact with a claimant or an
11 employer, or the Employment Development Department, until the
12 determination has been issued and someone wants to appeal from
13 that determination.

14 So, we would not have the opportunity of
15 providing a claim form to a person until after they'd already
16 received a determination from EDD. So, they would be the ones
17 that would have to provide a form.

18 They do have one, but as you rightly point out,
19 you have to ask for that form.

20 However, we will recognize a cocktail napkin, the
21 back of an envelope, even a letter that comes in saying, "I got
22 a raw deal," not asking for an appeal. We'll interpret that to
23 be a request for an appeal, and we will give them that
24 opportunity. So, we're very liberal in that regard.

25 CHAIRMAN LOCKYER: And recognize its legitimacy?

26 MR. BARNETT: Absolutely.

27 CHAIRMAN LOCKYER: There have been questions
28 raised by our staff to just inquire about your other jobs, or

1 other sources of employment, occasional employment and income.

2 I guess this is a full-time work; isn't it?

3 MR. BARNETT: Absolutely.

4 CHAIRMAN LOCKYER: I thought it was. Do you
5 contemplate other work, campaign consultant, or fundraising, or
6 other things of that sort?

7 MR. BARNETT: Definitely not campaign
8 consultant. This would not be a good position to have with my
9 party affiliation that have that kind of outside work.

10 However, I do have seven kids at this point.
11 Three of them are in college. I've got two at Jesuit High
12 School up here; one's still in grade school. And if I can, on
13 my own time, make another nickel, I certainly am going to.

14 CHAIRMAN LOCKYER: Well, you seem to have found
15 productive uses of our own time.

16 [Laughter.]

17 MR. BARNETT: Senator, that may be the opening I
18 need to introduce my wife, Jane.

19 CHAIRMAN LOCKYER: Sure.

20 MR. BARNETT: I certainly did not do it by
21 myself.

22 CHAIRMAN LOCKYER: Congratulations.

23 Now what are the likely -- I'm only looking for
24 areas of potential conflict. Obviously, you can't predict all
25 possibilities for future employment, but when you rule out
26 campaign consulting, which you've done ably in the past, what's
27 left? What are you thinking about for alternatives?

28 I'm sympathetic to the kids in college and all

1 those reasons.

2 MR. BARNETT: It's hard to predict.

3 CHAIRMAN LOCKYER: Don't we pay you guys enough?

4 MR. BARNETT: The quibble would not be about the
5 pay. Besides that, the amount was known going in.

6 CHAIRMAN LOCKYER: Too many mouths to feed.

7 MR. BARNETT: Too many colleges to feed, I think
8 is the problem.

9 I've sold an op. ed. piece to the Orange County
10 Register. I've been involved with Excel Telecommunications.
11 I've tried to do a number of things in my past lives when I've
12 held full-time jobs. I've also always had something else I was
13 doing on the side.

14 CHAIRMAN LOCKYER: I get the general idea. I
15 don't see any conflict associated with it.

16 SENATOR BRULTE: Your wife works for Senator
17 Leslie; is that correct?

18 MR. BARNETT: Thanks. Do you want to point out
19 that she's not on the state payroll, too, while you're at it?
20 Is there a trap door here, Jim?

21 [Laughter.]

22 CHAIRMAN LOCKYER: Are you supporting Mountjoy
23 for Lieutenant Governor?

24 [Laughter.]

25 CHAIRMAN LOCKYER: She works on fundraising?

26 MR. BARNETT: No, she is the only staff person on
27 the campaign for Leslie right now. She does not work on
28 fundraising.

1 CHAIRMAN LOCKYER: But in a campaign position.

2 MR. BARNETT: But in a campaign position; that's
3 correct.

4 CHAIRMAN LOCKYER: Well, actually, with most of
5 us, that's a commendation, not a criticism. Senator Leslie is a
6 fine Member and easy to work with. I think we can't complain
7 about whomever is associated with his office.

8 MR. BARNETT: I take it we wish him half well.

9 CHAIRMAN LOCKYER: He should always win
10 primaries.

11 [Laughter.]

12 CHAIRMAN LOCKYER: Are there other questions from
13 Members? Senator Ayala.

14 SENATOR AYALA: Mr. Barnett, until recently the
15 Chief Administrative Law Judge performed the duties of the
16 Executive Officer. Just recently, you appointed an Executive
17 Officer.

18 Why was that necessary?

19 MR. BARNETT: The history of our agency is that
20 we have been a quasi-judicial organization, and our workload has
21 grown exponentially over the years.

22 There was a time when there were, I think, five
23 hearing referees for the whole State of California. Those
24 positions are now called administrative law judges.

25 As we grew as an agency, we have promoted lawyers
26 to hearing referee and given them the title now of
27 administrative law. Along the way, the whole process of these
28 adjudications has changed. What was envisioned in the '30s was,

1 a citizen in the community would hear the employer in the
2 community, and their ex-employee, and listen to both sides and
3 make a decision.

4 Since that system was set up, we've evolved this
5 administrative law field very, very thoroughly. So, we now have
6 a very sophisticated, complicated -- complicated in terms of
7 the average person, I'll put it that way -- system.

8 What we've done is, we've promoted our lawyers,
9 judges, to positions of administration. And they haven't always
10 had the skill sets for administrative purposes.

11 In hiring an Executive Director and creating that
12 position, we looked at a 1980 opinion from the Attorney General
13 that said that the Board had the authority to delegate its
14 powers and certain other authority to an Executive Director or
15 to a person other than the Chief of Field Operations. This is
16 perfectly consistent with civil service law. It's fully
17 consistent with Government Code, and it's consistent with the UI
18 Code itself.

19 So, we felt the need for more management
20 experience at a time, as I indicated in my opening statements,
21 that our workload was spiraling up and then spiraling down. We
22 have made the decision to create the position, found a competent
23 candidate who has served ably in Republican and Democrat
24 administrations in the past.

25 We had to submit this to DPA for their approval,
26 so we believe that everything we've done is fully within code,
27 appropriate for civil service considerations, and that the
28 result is a better, smoother functioning agency.

1 SENATOR AYALA: Your caseload is increasing, you
2 mentioned.

3 MR. BARNETT: Well, it did spiral up to 290,000
4 cases, and we're down to, I think, projected 203,000 now. So,
5 we've been going up and down.

6 SENATOR AYALA: How does that go in line with the
7 phasing out of some district offices, if you're capable of going
8 up and removing some of the offices in the districts?

9 MR. BARNETT: We're counter cyclical. When the
10 economy's good, we get smaller because our workload gets
11 smaller. When the economy is bad, we start having great times
12 at our agency. So, we were hiring people; we were adding space;
13 we were generally increasing.

14 As our workload went down, we looked at office
15 space that we could shrink here in Sacramento. We combined two
16 offices into one. We're trying to find the right mesh between
17 facilities where we can hear the cases, interface with the
18 people, and not put an undue burden on them for travel. At the
19 same time, we don't want to lay off staff to pay for it.

20 SENATOR AYALA: So, a lot of the appeals are now
21 handled by phone?

22 MR. BARNETT: Some appeals are handled by phone
23 at this point. If the parties would have to travel an
24 inordinate distance, we have telephone hearings, in particular
25 in the northern part of the state. If the parties would like to
26 wait, then we can't provide them a timely hearing, but we can
27 get an administrative law judge around to their area for an
28 in-person hearing. If they would prefer a quicker hearing, we

1 can provide a telephone hearing to them.

2 The feeling of the Board, though --

3 SENATOR AYALA: Did the creation of this new
4 position change the chain of command within the Appeals Board at
5 all?

6 MR. BARNETT: It's changed the chain -- well,
7 chain of command would be difficult to analogize to. We have
8 the old chain of command still in place, where those people who
9 are responsible for the adjudicatory function, the Chief of
10 Field Operations who's in charge of all the ALJs under him, and
11 then the Chief of Appellate Operations and the ALJs under him,
12 still report directly to the Board.

13 With the creation of the Executive Director, what
14 we have done is delegate to him certain of the powers that the
15 Board itself had as an appointing authority under state law.
16 So, we've vested within him the power to do our will, to see
17 that it's done. And in the bargain, what we've picked up is
18 additional expertise in the area of budgets, expertise in the
19 area of civil service and management, and things of that nature.

20 SENATOR AYALA: I have no other questions,
21 Mr. Chairman.

22 CHAIRMAN LOCKYER: Are there other questions?

23 Is there anyone present who would wish to comment
24 either for or opposed? Mary Jane, what do you think.

25 I would note for the record that former Senator
26 David Roberti called to speak positively on your behalf. That's
27 obviously a significant recommendation.

28 SENATOR LEWIS: Move confirmation.

1 CHAIRMAN LOCKYER: We have a motion to confirm.
2 Any last comments or questions? Are you ready to call the roll?
3 Please call the roll.

4 SECRETARY WEBB: Senator Ayala.

5 SENATOR AYALA: Aye.

6 SECRETARY WEBB: Ayala Aye. Senator Brulte.

7 SENATOR BRULTE: Aye.

8 SECRETARY WEBB: Brulte Aye. Senator Hughes.

9 SENATOR HUGHES: Aye.

10 SECRETARY WEBB: Hughes Aye. Senator Lewis.

11 SENATOR LEWIS: Aye.

12 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

13 CHAIRMAN LOCKYER: Aye.

14 SECRETARY WEBB: Lockyer Aye. Five to zero.

15 CHAIRMAN LOCKYER: Good luck.

16 MR. BARNETT: Thank you.

17 Senator, if I could just say, now that it's no
18 longer self-serving, the legislative appointees have been
19 outstanding. The organizational changes we've made at the
20 agency over the years that I've been on it would not have been
21 possible without the participation of legislative members.

22 And furthermore, I think there's a tendency to
23 feel that a person who is up for confirmation is more sensitive
24 at this particular point in time than afterwards. I'm available
25 to any Member of this Committee at any point that would care to
26 discuss an issue, or any member of your staff.

27 Thank you.

28 CHAIRMAN LOCKYER: Thank you. All right, Members

1 we have gubernatorial appointees not required to appear.

2 [Thereupon the Committee acted
3 on other agenda items.]

4 CHAIRMAN LOCKYER: The matter of Ms. Arnold is
5 still, I guess, on hold. We're waiting for some kind of
6 communication from the Governor's Office.

7 SENATOR BRULTE: The administration has been
8 informing me they will be withdrawing that appointment.

9 CHAIRMAN LOCKYER: I've learned to wait for the
10 paperwork.

11 We have a letter which I've just received from
12 the Governor's Office simply saying he hereby respectfully
13 withdraws for consideration the nomination of the following
14 appointee, Terry Arnold, Member of the Industrial Welfare
15 Commission, Sincerely, Pete Wilson.

16 That particular name shall be withdrawn, and we
17 don't need to take further action on that item.

18 [Thereupon. This portion of the
19 Senate Rules Committee hearing was
20 terminated at approximately 4:35 P.M.]

21 --ooOoo--
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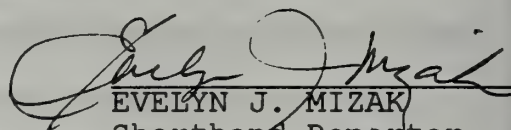
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of March, 1997.


EVELYN J. MIZAK
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MONDAY, MARCH 31, 1997
1:53 P.M.

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SENATE RULES COMMITTEE
STATE OF CALIFORNIA

HEARING

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, MARCH 31, 1997

1:53 P.M.

Reported by

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROSEMARY E. THAKAR, Member
Board of Governors
California Community Colleges

ROBERT L. TRIGG, Member
State Board of Education

BILL LUCIA, Executive Director
State Board of Education

MARINA M. TSE, Member
State Board of Education

ANN KINKOR
Epilepsy Foundation of America
Los Angeles & Orange Counties

INDEXPage

Proceedings 1

Governor's Appointees:

ROSEMARY THAKAR, Member
Board of Governors

California Community Colleges 1

Background and Experience 1

Questions by CHAIRMAN LOCKYER re:

Most Contentious or Difficult Issue
before Board 2

Questions by SENATOR HUGHES re:

Vote vis-a-vis Petrossian's Vote 3

Role of Community Colleges in Implementation
of Welfare Reform 3

Personal Efforts to Accommodate Welfare
Recipients 4

Availability of Child Care on Campuses 5

Questions by SENATOR AYALA re:

Board's Position on Student Fees 5

Questions by CHAIRMAN LOCKYER re:

Effect of Proposition 209 6

Motion to Confirm 7

Committee Action 7

ROBERT L. TRIGG, Member

State Board of Education 7

Background and Experience 8

Questions by SENATOR HUGHES re:

Number of Low-performing Schools in
Davis School District 10

Bringing about Change to Meet Goals 11

Reason for Success in Elk Grove and
Davis School Districts 12

1	Ways to Improve Compton School District	12
2	Charter Schools in Compton	13
3	Expansion of Number of Charter Schools	14
4	Questions by CHAIRMAN LOCKYER re:	
5	Number of Charter Districts	14
6	Questions by SENATOR AYALA re:	
7	Position on Public Funding for Private	
8	Schools	15
9	Questions by CHAIRMAN LOCKYER re:	
10	Issue on Voucher Proposals that Made Them	
11	Unlevel Playing Fields	16
12	Questions by SENATOR AYALA re:	
13	Experience with Charter Schools	16
14	Position on Expansion of Charter Schools	17
15	Responsibility for Overseeing Charter	
16	Schools	17
17	School Board in Victorville Refusing to	
18	Take Responsibility over Charter School	18
19	Response by BILL LUCIA, Executive Director	
20	State Board of Education	19
21	Questions by SENATOR HUGHES re:	
22	State Board's Obligation Is Numbering	
23	the Charters	20
24	Response by MR. LUCIA	20
25	Ability to Vote in Opposition to Colleagues	
26	on Board	21
27	Questions by SENATOR LEWIS re:	
28	State Board's Responsibility in	
	Allowance of Charter Districts	22
	Response by MR. LUCIA	22
	Utilization of Waiver Authority	23

Questions by CHAIRMAN LOCKYER re:

Class Size Reduction vs. Longer School Year	23
--	----

Questions by SENATOR HUGHES re:

Benefit of Longer School Year	24
-------------------------------------	----

Comments by CHAIRMAN LOCKYER re:

Put Over Vote on Appointment	25
------------------------------------	----

MARINA M. TSE, Membe State Board of Education	25
--	----

Background and Experience	25
---------------------------------	----

Questions by CHAIRMAN LOCKYER re:

Philosophy on Voucher Proposals	27
---------------------------------------	----

Board's Goals for 1997	27
------------------------------	----

Length of School Days in Orient	28
---------------------------------------	----

Questions by SENATOR HUGHES re:

Position on Bilingual Education	28
---------------------------------------	----

State Intervention in Compton District	29
--	----

Charter Schools	29
-----------------------	----

Teaching Standard English to African- American Students	30
--	----

Voucher System	31
----------------------	----

Questions by SENATOR BRULTE re:

Voucher System Appointee Could Support	32
--	----

Questions by SENATOR AYALA re:

Foreign Languages	32
-------------------------	----

Position on Using Public Funds for Private School Vouchers	33
---	----

Position on Charter Schools	33
-----------------------------------	----

Expansion of Charter School System	34
--	----

Questions by SENATOR HUGHES re:

Knowledge of Charter School at
Cal State L.A. 35

Witness in Support:

ANN KINKOR
Epilepsy Foundation of America
Los Angeles and Orange Counties 36

Statement by SENATOR LEWIS re:

Request for More Time to Reflect
on Vote 38

Termination of Proceedings 38

Certificate of Reporter 39

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Miss Thakar is first for appointees. Good afternoon.

MS. THAKAR: Good afternoon, Mr. Chairman, Committee Members. My name is Rosemary Thakar.

I come before you today to ask you to recommend my confirmation as a Governor on the Board of Governors of the California Community Colleges.

I'm a San Francisco resident, a California business woman. Our companies employ about four hundred people in Southern and Northern California.

I think I bring a unique experience to the Board. I entered a California community college while I still had four teenaged sons at home. Attended school full time on my way to the University of California at Berkeley where I received a Bachelor Degree.

I have been a life-long volunteer in causes helping young people to succeed where I was not able to do so at that same point in my own life.

I want very much to serve on this body because I feel that it makes an enormously important contribution to the work force in the State of California. And I think also on the Board we need to have diversity. We have only one other woman. Ms. Petrossian, who is the President of the Board, and I are the only women presently serving on that Board.

CHAIRMAN LOCKYER: Thank you. You've been there since last July?

1 MS. THAKAR: Yes. I attended the first meeting
2 in July.

3 CHAIRMAN LOCKYER: What's been the most
4 contentious or difficult issue during these last several months?
5 Anything that's been before the Board?

6 MS. THAKAR: Well, there are a number of things
7 that are important, but I think really the most important issue
8 is access. That is, that we make absolutely certain that those
9 people who want to come to the community colleges for whatever
10 reason are allowed access.

11 And beyond that, I would say that we need to
12 provide courses and training that will put them into the work
13 force. California certainly is the leader in high tech, and the
14 community colleges system has a unique opportunity to provide
15 that kind of work force to the high tech industries.

16 CHAIRMAN LOCKYER: Now, there haven't been
17 arguments or disagreements or issues before the Board, have
18 there, with respect to access in the last eight or nine months?

19 MS. THAKAR: Not --

20 CHAIRMAN LOCKYER: It's been pretty calm?

21 MS. THAKAR: Yes, I would say it's been calm, but
22 it's been very serious in that we are trying to maintain and
23 serve maximum numbers of people.

24 And the most important thing is that we are there
25 for them when they need us.

26 CHAIRMAN LOCKYER: Senator Hughes.

27 SENATOR HUGHES: Thank you very much for coming
28 today.

1 I note that Alice Petrossian is the President of
2 your Board?

3 MS. THAKAR: Yes, she is.

4 SENATOR HUGHES: Do you vote most of the time
5 with her, or against her, or sometimes you vote differently?

6 MS. THAKAR: I have to date voted with Ms.
7 Petrossian for the most part.

8 SENATOR HUGHES: So that you usually don't have a
9 quarrel with her? She's an educator by background.

10 MS. THAKAR: No, no quarrel whatsoever. She
11 brings enormous talent to the Board, and the Board is fortunate
12 to have her.

13 SENATOR HUGHES: What do you think should be the
14 role of community colleges in the implementation of our welfare
15 reform here in our state?

16 MS. THAKAR: We have presently before the Board,
17 and the other boards that help to govern the system, a plan to
18 accommodate all welfare recipients. I mean, we are very
19 concerned that those welfare clients who want to attend college,
20 community college system, will be allowed to do so.

21 We do know that for every dollar increase in the
22 fee structure, about 12,000 students don't come, don't -- just
23 don't appear because, for whatever reason, either they cannot
24 afford it, or they feel that their dollars need to go to other
25 places. But there are aid programs in place, and there are many
26 concessions made for welfare recipients.

27 The most important thing is for us to get them to
28 the campuses and for them not to be deterred because they are on

1 welfare.

2 SENATOR HUGHES: Under the new federal welfare
3 reform legislation, the amount of time spent in vocational
4 educational training will be limited to only 12 months. And
5 most of your certificated programs are two-year programs.

6 So, how does the community college system propose
7 to modify these programs to really meet the needs of the welfare
8 recipients? And what are your ideas about that?

9 MS. THAKAR: Well, we're looking for outside
10 funds. We're looking to industry to help us. We're looking to
11 our foundation to help us with funds to make sure that these
12 people are able to complete the training required for the
13 particular certificate which interests them.

14 SENATOR HUGHES: If there are some campuses that
15 really don't have a program that will accommodate these
16 recipients a little more, what would be your particular effort,
17 as a member of the Board, to see that they meet the needs of the
18 student population that wants to have access to a program like
19 this.

20 I'm thinking, a lot of women with children, some
21 of these will be leaving their home for the first time, who
22 never even thought about the possibility of going to a community
23 college?

24 MS. THAKAR: Well, there certainly are -- I can't
25 say for certainty how many programs there are, but I do know
26 that there are child care programs in place at campuses where
27 there is a high demand for that, so that child care should not
28 be a deterrent for a client to come to the campus.

1 SENATOR HUGHES: Are there any of your community
2 colleges where there are no child care programs, or where there
3 is minimal child care available?

4 MS. THAKAR: I can't say for certain, being as
5 new as I am to the Board.

6 I do know, though, that within a given area where
7 you will have three or four campuses that the student can get
8 to, one of those campuses is going to be able to provide child
9 care.

10 SENATOR HUGHES: Would you as a new person there
11 look into that and find out?

12 MS. THAKAR: I will certainly do that.

13 SENATOR HUGHES: As woman to woman, find out
14 where there's a paucity of child care available.

15 And we would imagine that most people want to
16 become independent and productive.

17 MS. THAKAR: Oh, absolutely, absolutely.

18 SENATOR HUGHES: So, do you make a commitment to
19 see what you could do about that?

20 MS. THAKAR: Yes, yes. I will check with the
21 Chancellor's office, and I will communicate to your office about
22 that.

23 SENATOR HUGHES: I appreciate that very much.
24 Thank you.

25 SENATOR AYALA: What is the position of the Board
26 of Governors as it pertains to student fees?

27 MS. THAKAR: Well, as I said, we know for a fact
28 that every dollar increase in fees deters 12,000 students from

1 attending. That's system wide.

2 I would think that we need to, at a minimum, we
3 need to maintain fees where they are, and where possible, where
4 funds permit, reduce the fees.

5 SENATOR AYALA: Your position is that you're not
6 interested in raising the fees but maintain them where they are?

7 MS. THAKAR: No, I think the Board as a whole
8 feels that the worst possible thing we could do for our
9 constituency is to raise fees.

10 SENATOR AYALA: And you support that position?

11 MS. THAKAR: Absolutely. At this level,
12 absolutely, yes.

13 When I attended, Senator, there were no fees.
14 When it attended Diablo Valley College, there were no fees to
15 enter.

16 CHAIRMAN LOCKYER: Has there been a discussion of
17 Proposition 209 that was passed last November? Has there been a
18 discussion at the Board at all of what that means in terms of
19 any policies or programs?

20 MS. THAKAR: Well, my interpretation of what that
21 means to the Board is that we will do everything that we can to
22 see that anyone who wants to attend a community college is able
23 to do so.

24 There presently are really no entry restrictions,
25 and the Board as a body has worked very hard for diversity
26 within the student body, within the -- at the instructor level,
27 and certainly at board levels also.

28 CHAIRMAN LOCKYER: Is there anyone present who'd

1 wish to make any comment? I think we're probably ready to move
2 along.

3 SENATOR HUGHES: So move.

4 CHAIRMAN LOCKYER: All right, motion to recommend
5 confirmation. Call the roll.

6 SECRETARY WEBB: Senator Ayala.

7 SENATOR AYALA: No.

8 SECRETARY WEBB: Ayala No. Senator Brulte.
9 Senator Hughes.

10 SENATOR HUGHES: Aye.

11 SECRETARY WEBB: Hughes Aye. Senator Lewis.

12 SENATOR LEWIS: Aye.

13 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

14 CHAIRMAN LOCKYER: Aye.

15 SECRETARY WEBB: Lockyer Aye. Three to one.

16 CHAIRMAN LOCKYER: Good luck.

17 MS. THAKAR: Thank you.

18 [SENATOR BRULTE later added an
19 Aye vote, and the final vote was
20 four to one for confirmation.]

21 CHAIRMAN LOCKYER: Mr. Trigg is next on the list.
22 How are you doing?

23 MR. TRIGG: Fine, thank you. It's an honor to be
24 here today.

25 CHAIRMAN LOCKYER: Are you retired now?

26 MR. TRIGG: Yes, I have retired.

27 CHAIRMAN LOCKYER: Were you an active
28 administrator?

1 MR. TRIGG: Yes.

2 CHAIRMAN LOCKYER: Did you want to open with any
3 comments at all?

4 MR. TRIGG: I think I would, if that's
5 appropriate.

6 I felt I would like to make, I think, three
7 comments on my behalf and seeking your support.

8 I think the first would be, I guess, dealing with
9 the qualifications to serve on the California State Board. And
10 the first would be the fact I do have 35 years' experience in
11 public education in the State of California. Of that, I've
12 taught at the junior high, and the senior high, and the
13 community college, and the university level. I've worked as a
14 counselor in a junior high and a senior high school, and in an
15 urban setting.

16 I have served as the vice principal and principal
17 of a high school. I've served as the Associate Superintendent
18 of the San Juan School District here and the Deputy
19 Superintendent later. And then served as the Superintendent of
20 Schools in Davis, and then moved from there to -- my last 13
21 years in public education I served as Superintendent of Schools
22 for the Elk Grove Unified School District.

23 I think in addition to that, I've had some state
24 level responsibilities that I hope help qualify me for this.
25 One of those would be, I served as the Chairman of the City
26 Superintendents for the State of California for a year. I also
27 served as the Chair of the Superintendents Association for the
28 State of California for a period of three years. And served as

1 the Chair of a reform task force for secondary education, where
2 we published the booklet as a result of that called, "Second to
3 None."

4 Secondly, I think the experiences I've had have
5 been both urban and rural and suburban. And I think that has
6 been an important factor to me. Serving as a high school
7 principal, I served a student body that enjoyed a rich
8 multi-cultural and multi-ethnic background. And the Elk Grove
9 School District, as we grew very rapidly over the years, became
10 a district of approximately 54-55 percent minority children, and
11 we had 57 languages in our district.

12 I guess the last point I would like to make on my
13 behalf is really that --

14 CHAIRMAN LOCKYER: Was it Davis or Elk Grove
15 that had that?

16 MR. TRIGG: Elk Grove.

17 CHAIRMAN LOCKYER: Elk Grove has 57 languages?

18 MR. TRIGG: Fifty-seven languages, that's
19 correct. And about 55 percent of the children are minority,
20 growing at about 2,000 to 2500 kids a year.

21 I think the last one was, I believe very strongly
22 in high academic standards for our children. I think we should
23 be held -- I think parents and agencies, school districts,
24 professional staff, should be held accountable. We should have
25 a rigorous academic program for all of our children. I think
26 that's probably the greatest gift that we can give our young men
27 and women when they leave our high schools, to be able to be
28 prepared for employment, or to have the choice of employment or

1 moving on to a college or university of their choice.

2 That's my comment.

3 CHAIRMAN LOCKYER: Questions? Senator.

4 SENATOR HUGHES: In Davis, how many low
5 performing schools did you have in Davis, if any?

6 MR. TRIGG: In Davis, we had very few.

7 SENATOR HUGHES: That's right.

8 MR. TRIGG: Because when we had a Title One
9 school, it was typically made up of the children of graduate
10 students.

11 SENATOR HUGHES: So, if their parents weren't
12 doing well, they wouldn't have been there; right?

13 MR. TRIGG: Probably.

14 SENATOR HUGHES: What about in Elk Grove? Did
15 you have any --

16 MR. TRIGG: Absolutely.

17 SENATOR HUGHES: Everything is comparative;
18 right?

19 MR. TRIGG: Absolutely.

20 I think one of the things that really attracted
21 me to the Elk Grove School District was their diversity. I felt
22 they were becoming what the State of California is and is
23 becoming, and I found that very challenging.

24 So, absolutely, we had youngsters who did not
25 meet the goals that we set for them, and that is something that
26 we struggled with.

27 SENATOR HUGHES: What did you do to bring about
28 change to help them to meet those goals that you, as an

1 educator, wanted?

2 MR. TRIGG: I found, you know, after looking at
3 this for many years, there's certain things you do by just doing
4 it. By that, I'm saying we decided that we really needed to pay
5 attention to those youngsters who were in the middle range and
6 those youngsters who, perhaps, weren't achieving that.

7 One of the things that we did is, I was very
8 fortunate to have a board of education that allowed us to adopt
9 very high academic standards, including algebra for all
10 students. And it's not just a question of requiring the algebra
11 for all students. It's a question of requiring and then seeing
12 that they'll be successful. So, we tried to do our best to
13 provide tutoring services and different approaches for the young
14 men and women.

15 And I'd say that, after we did this for a
16 five-year period and studied it, as one example, after studying
17 it, we didn't have one youngster that didn't graduate from an
18 Elk Grove high school because of the inability to handle algebra
19 themselves.

20 SENATOR HUGHES: Were their parents able to help
21 them at home?

22 MR. TRIGG: In some cases, not all cases. Where
23 they couldn't, we certainly encouraged it. We wanted to bring
24 them along. That takes counseling; it takes a lot of effort, I
25 think, on the part of your staff. It takes a little different
26 approach.

27 Most of all, you have to believe that those kids
28 can do it. You have to believe it, and then go after it and

1 ensure them they can do it, and to let them know what doors are
2 really going to be open for them.

3 To me, the closer we can come to having
4 youngsters qualified to go to college, all kids qualified to go
5 to college, then we've really succeeded. The choice to do that.
6 I don't think we should force them to go.

7 SENATOR HUGHES: What do you think was part of
8 your success in both of these school districts? Did you have
9 the school board members with you as part of the team to make
10 the difference, to reach your goals?

11 MR. TRIGG: Absolutely.

12 SENATOR HUGHES: All right.

13 Now, let me give you a district that I have part
14 of in my district, the Compton School District. What would you
15 have done if you had been asked to be the administrator in that
16 area, where the school board ran into great, great difficulty?
17 What are your views? How do you think you could have gone about
18 improving the school district that's in intensive care like this
19 one is?

20 MR. TRIGG: Well, number one, you don't do it
21 alone. But I do think you help set the tone for what it is
22 you're trying to get done. And I think you have a deep
23 responsibility to help work with that board to help them set
24 goals and then to go after these goals.

25 I think you need to struggle for some stability.
26 I think there's some basic things that are pretty fundamental to
27 this. You know, are the kids reading? If not, why not? And
28 then go after it. Do the children have books? If they don't

1 have books, why don't they have books? And then go after it.

2 And then to create, I think, a teaching
3 environment where you can attract young men and women that would
4 come into the profession and then do what you can to keep them
5 there by providing an environment in the classroom that is one
6 that's safe, and where they have the tools to really do their
7 job.

8 And so, I think all of that kind of put together,
9 along with an enormous effort to bring families into the
10 responsibility for educating their children.

11 SENATOR HUGHES: Now, in a troubled district like
12 Compton School District, people are picking up educational
13 literature, and they're reading about wonderful institutions
14 called charter schools.

15 Do you think a charter school could work in a
16 Compton? If so, why so? If not, why not?

17 MR. TRIGG: Well, I think -- let me think about
18 that.

19 SENATOR HUGHES: I know that's a loaded question.

20 MR. TRIGG: No, that's perfectly all right.

21 You know, I think charter schools are absolutely
22 dependent upon the, like most any other school, on the quality
23 of those people that are putting it together.

24 So, I'm sure in that community there would be
25 people that would be able to do this and do it effectively. The
26 concern that I have on it, and I wanted to be sure that on the
27 charter school, that there is a method of evaluating the
28 effectiveness of what it is the youngsters are learning.

1 But I think if it creates a bit of competition,
2 that would be very healthy. I think it puts people in a
3 position where they ask difficult questions about their
4 schools. I think they should ask difficult questions about
5 their schools. I think it would be more difficult than some
6 places to do this, but I think it's doable.

7 SENATOR HUGHES: Do you think we should expand
8 the limit that we have now? We have 100, and a lot of people in
9 various communities are saying we need more, more, more.

10 Do you think we should just go about and expand
11 the limit so that anyone who wants one can get one, like a
12 McDonald's franchise or something like that?

13 MR. TRIGG: No, I wouldn't be in favor of anybody
14 that wants one could get one.

15 But I would be in favor, when you think of 100
16 schools in the state compared to the thousands of schools that
17 are really available, that's not a tremendous number. If they
18 can set an example whereby the rest of us could benefit from,
19 then I'm saying I would have no problem with it.

20 Again, though, I think we really need to be able
21 to evaluate the effectiveness of those programs, and it's my
22 understanding that we are conducting a study as we speak on
23 that. That is my number one concern with the charters.

24 SENATOR HUGHES: Thank you.

25 CHAIRMAN LOCKYER: There are two charter
26 districts now?

27 MR. TRIGG: I believe so.

28 CHAIRMAN LOCKYER: That's what our notes say.

1 Does anyone know who the charter districts are?

2 MR. TRIGG: I'm not sure.

3 CHAIRMAN LOCKYER: You might have somebody over
4 there phone me and tell me.

5 MR. TRIGG: Okay.

6 CHAIRMAN LOCKYER: Senator Ayala.

7 SENATOR AYALA: I have a couple questions.

8 What is your position on public funding of
9 private schools, vouchers, K through 12?

10 MR. TRIGG: Well, number one, I believe in
11 competition. I think that's fair. I believe that any time
12 anybody can set a good example for the rest of us.

13 My problem is so far on the vouchers that I have
14 seen, I don't feel that they have created a level playing field
15 for that. I want to be sure that youngsters are not harmed by
16 this process and can only benefit from it.

17 I would be open to a voucher that I think in the
18 future, if it were well developed that I could --

19 SENATOR AYALA: Public funding for private
20 schools?

21 MR. TRIGG: Public funding for private schools.

22 CHAIRMAN LOCKYER: That would be a voucher that
23 someone could use at a private school.

24 MR. TRIGG: Yes.

25 SENATOR AYALA: It doesn't matter how they're
26 paid, but they're paid from public funds and private
27 enterprise.

28 I mean, if you want to do that, I could start a

1 store.

2 MR. TRIGG: I would want to look at that very,
3 very carefully. I really would.

4 CHAIRMAN LOCKYER: What are the issues that made
5 you feel it wasn't a level playing field, or defects in the
6 proposals we've heard that you would remedy in what way?

7 MR. TRIGG: Well, working in districts, I think,
8 that had the rich diversity of youngsters, I'm very fearful of
9 the impact that it may have on families who have great needs.
10 I'm worried about those districts that are not functioning as
11 well as they should.

12 Now, I think there might be better ways of
13 perhaps improving that. So, that's really, I think, the issue
14 that I'm dealing with here.

15 I think in terms of the funding and this type of
16 thing that concerns me.

17 SENATOR AYALA: I have a couple more questions.

18 What has been your experience with the charter
19 schools in terms of early success and failures? What has been
20 the experience there as a board member? What do you hear about
21 these schools?

22 MR. TRIGG: As I mentioned earlier, one of the
23 concerns I have is, I don't think we have a solid method of
24 evaluating that. That's what I have been encouraging. I would
25 like to have better information on that.

26 One thing is to be able to say, well, I feel good
27 about my charter school. That's with one level.

28 The next level that I'm interested in is,

1 demonstrate to me that young men and women or the children, are
2 they reading better? You know, are they writing better? Are
3 they computing better.

4 SENATOR AYALA: We don't know that yet?

5 MR. TRIGG: No, we don't know that.

6 SENATOR AYALA: So, are you in favor of expansion
7 of these schools, of charter schools?

8 MR. TRIGG: I would be in favor of expanding it
9 only if I felt it was a particularly good charter and one, I
10 think, that we could talk to them about evaluating.

11 SENATOR AYALA: In terms of charter schools,
12 whose responsibility is it to make sure that the students are
13 well taken care of in school in terms of math and reading?

14 MR. TRIGG: It's primarily the school district.
15 Not even the school district, but it would be the agency that
16 opened the charter school.

17 SENATOR AYALA: Isn't the Board of Education
18 responsible for every charter school within that school
19 district?

20 MR. TRIGG: We're responsible for the --

21 SENATOR AYALA: Quality and the policies, and all
22 that sort of thing, of running a charter school?

23 MR. TRIGG: Well, we have a very indirect
24 responsibility on that.

25 SENATOR AYALA: I don't mean you. I'm talking
26 about local school boards.

27 MR. TRIGG: Okay, let's see if I understand the
28 question.

1 SENATOR AYALA: Whose responsibility is it to
2 make sure that the charter schools are run properly?

3 MR. TRIGG: The responsibility, as I understand
4 it, of the charter school is the agency that applies and becomes
5 the charter. That takes a good part of that responsibility away
6 from the local school board.

7 SENATOR AYALA: I was under the impression the
8 school boards could delegate people for charter schools, but
9 they never lose responsibility.

10 We have a school district in Victorville that
11 apparently the school board doesn't want anything to do with the
12 charter school, and people are complaining about it.

13 I was under the impression that school districts
14 authorize charter schools and were under the auspices of the
15 school boards?

16 MR. TRIGG: That's not my understanding.

17 SENATOR AYALA: It's not working in Victorville,
18 I don't think.

19 MR. LUCIA: The school board has to approve the
20 charter. The school board approves the charter, and then it goes
21 from there.

22 SENATOR AYALA: They can never lose control, and
23 apparently in the city of Victorville school district, they're
24 not doing it. They just washed their hands of the whole
25 thing.

26 I'm very surprised. I was reading in the paper,
27 I think it was Saturday, that that was taking place in the city
28 of Victorville.

1 That's one reason I'm not very happy about
2 charter schools, because they have to be responsible to elected
3 officials, and that's the school board. If the school board
4 wants to authorize a charter school, I think it's fine and
5 dandy, but they should never lose the responsibility. They can
6 delegate, but not lose the responsibility. In some cases
7 they're not doing it.

8 CHAIRMAN LOCKYER: Did you want to jump into
9 this?

10 MR. LUCIA: Yes, Senator.

11 Bill Lucia, the Executive Director for the State
12 Board of Education.

13 The State Board's primary role actually is in
14 numbering the charters. That's the most significant role, as
15 well as jointly approving a charter district with the State
16 Superintendent when a whole school district and all the school
17 sites in the district become a charter.

18 With respect to accountability at the local level
19 and making sure that the learning is actually happening, it is,
20 in fact, a charter between the organizing agent and the local
21 school district governing boards, and that's a compact, if you
22 will. They are supposed to exercise oversight as a local school
23 board over that school site. And they shouldn't be neglecting
24 that whatsoever.

25 That's something that really is something that
26 would be interesting to forward on to the county Office of
27 Education as well as to the State Board and the State
28 Superintendent, if what you're saying is the local governing

1 board is saying that they don't want to have anything to do with
2 the charter.

3 CHAIRMAN LOCKYER: Why don't you check?

4 MR. LUCIA: Yes, we will. That was in
5 Victorville?

6 SENATOR AYALA: If the local board refuses to
7 accept the responsibility, then it falls back on the State
8 Board? Someone has to be responsible.

9 MR. LUCIA: I don't believe it is that way in
10 statute, but we'll look into it and see.

11 SENATOR AYALA: Would you do that for me?

12 MR. LUCIA: Yes, absolutely, and we'll get back
13 to you.

14 SENATOR HUGHES: I'd like to ask this witness
15 another question.

16 You said the State Board's obligation and
17 responsibility is in numbering the charters. You mean seeing
18 that none goes over, none becomes 101 or 107 or 108?

19 CHAIRMAN LOCKYER: There are about 118 now.

20 SENATOR HUGHES: What do you mean by numbering
21 them? Explain that to me.

22 MR. LUCIA: It's exactly the way you described
23 it. It is a primary role as well as in -- there are some
24 charters have started and then fallen apart. They either
25 haven't gotten off the ground, or they've been shut down by the
26 authorizing agency in the case of one down in Los Angeles where
27 there was financial impropriety.

28 Therefore, you no longer have the number, let's

1 say hypothetically, the number eleven no longer a functioning
2 school, so the next time an application comes to be numbered,
3 then the State Board gives it the subsequent number, one hundred
4 and whatever.

5 With respect to its other statutory
6 responsibilities, it's supposed to also consider when there's a
7 dispute at the local level between the local governing board as
8 an agent that has authority to initiate a charter or the local
9 county office of education. And then ultimately, that can be
10 appealed to the State Board.

11 But the only other function of the State Board in
12 the charter creation process is in a charter district, and
13 that's only with both a majority vote of the State Board of
14 Education as well as the agreement of the State Superintendent
15 of Public Instruction can a chartered district be established.

16 SENATOR HUGHES: Mr. Trigg, how would you vote,
17 if you really felt that this charter school was not effective,
18 would you be a dissenting vote, even though you knew that the
19 majority of the Board Members, of your colleagues, really
20 believed that this charter school was worthy? Would you be a
21 dissenting vote?

22 MR. TRIGG: I would vote my conscience.

23 SENATOR HUGHES: That's not what I asked you.

24 MR. TRIGG: Yes.

25 CHAIRMAN LOCKYER: I think it is.

26 SENATOR HUGHES: Okay, you'd vote your
27 conscience, okay.

28 MR. TRIGG: And the answer to that is, yes, I

1 would vote against it if that is the case.

2 SENATOR HUGHES: Okay, that's what I wanted to
3 hear from you.

4 CHAIRMAN LOCKYER: Senator Lewis, did you have a
5 question?

6 SENATOR LEWIS: Did I understand that the State
7 Board has the responsibility, above and beyond numbering, in
8 terms of the allowance of charter districts as opposed to
9 charter schools.

10 MR. TRIGG: That's my understanding.

11 SENATOR LEWIS: So, in reality, the only time
12 that Senator Hughes' example would come into play would be in
13 the creation of a charter school district.

14 MR. TRIGG: That's correct.

15 CHAIRMAN LOCKYER: I think they have a waiver
16 process which lets it go above 100, which they would have to use
17 that discretion.

18 MR. LUCIA: Absolutely correct. That's the other
19 one where you see the Board now more involved, and that is in
20 considering in the waiver of that part of the statute, using the
21 general waiver authority to go beyond the 100 statutory cap.
22 The Board is then -- has a further consideration in terms of the
23 merits of the proposal to some degree.

24 There is a legal question and a challenge as to
25 how much the Board can get into the details of the proposal
26 versus just determining whether or not they believe one
27 additional charter, assuming that all the requirements of the
28 law have been met --

1 SENATOR LEWIS: How many times does the Board
2 utilize that waiver authority?

3 MR. LUCIA: Currently the numbering is, I think,
4 in the 120s. So, that's not to say that 20 have gone above,
5 because some have closed, but it's in the range of over a dozen,
6 close to two dozen.

7 SENATOR LEWIS: Didn't the Legislature authorize
8 some additional charter schools? Didn't Senator Hayden have a
9 measure? It didn't pass?

10 MR. LUCIA: That would have been limited just to
11 the L.A. Unified School Direct and the number, but that was an
12 amendment that was separate and apart from the overall statutory
13 cap.

14 SENATOR LEWIS: So, there's been no legislative
15 authorization above the 100.

16 MR. LUCIA: No.

17 CHAIRMAN LOCKYER: Except for waivers.

18 MR. LUCIA: Except for waivers, and that's using
19 the Board's general waiver authority.

20 CHAIRMAN LOCKYER: Mr. Trigg, I'd be interested
21 in your experienced reaction to the debate over the most
22 efficacious expenditure of public moneys between class size
23 reduction or longer school year? What are your thoughts, if you
24 had to make a choice between those two, do you have a tilt?

25 MR. TRIGG: Well, it's a very interesting
26 question, of course, because the class size reduction is so
27 popular with parents and teachers, and this type of thing.

28 I think the research -- and I'm delighted to see

1 us do that, but on the other hand, we need a longer year, I
2 think, for training of our teachers, and we also need a longer
3 year for the -- I think we need a longer day as far, as that
4 goes, and year for our children to be in school.

5 So, I'm delighted that we have the reduction in
6 class size, but on the other hand, I'm pleased to see us try to
7 move in a direction of longer day, longer year.

8 SENATOR HUGHES: What educational benefit is it?
9 Some children learn faster than others. Should those children
10 be penalized because you have other children who are slower?
11 So, you just want a longer school year and a longer school day
12 because that gives an administrator and custodians more time to
13 be employed?

14 CHAIRMAN LOCKYER: They're year around.

15 MR. TRIGG: Yes.

16 SENATOR HUGHES: How do you --

17 CHAIRMAN LOCKYER: Let me answer because I
18 started this.

19 At least all the research that I've seen suggests
20 that student performance increases as a direct function of the
21 length of the school year. And that our school years are very
22 short compared to most of the planet.

23 Anyhow, that's the reason I asked the question.

24 MR. TRIGG: Yes. And I think we should do
25 whatever we possibly can to see that we try to alleviate that, I
26 really do. It's a major -- it should be a major thrust at the
27 local level, I think, as well as the state.

28 CHAIRMAN LOCKYER: I'm informed the two charter

1 districts are Pioneer and Kingsburg, both in the San Joaquin. I
2 don't know where Pioneer is. I know where Kingsburg is.

3 Is there anyone present who wants to comment?
4 Other questions from Members.

5 I'm going to suggest that we not go to a vote
6 today. I want to be honest about it, Mr. Trigg. I'm nervous
7 about your responses on voucher. It sounded to me like there
8 was too much opportunity for support of a voucher system in your
9 philosophy, and I just won't vote to confirm people that have
10 that view.

11 I'd like let Senator Johnston be present, since
12 he's ill today and wasn't able to be here. Since it's his
13 district, and he strongly supports you, I think it's only fair
14 to let him talk to us about those things.

15 If that's okay, we'll just defer going to a vote
16 today.

17 MR. TRIGG: All right.

18 CHAIRMAN LOCKYER: Thank you.

19 MR. TRIGG: All right, thank you.

20 CHAIRMAN LOCKYER: Ms. Tse, good afternoon.

21 MS. TSE: Good afternoon, Senators.

22 CHAIRMAN LOCKYER: What do you want to tell us?
23 Something here to start?

24 MS. TSE: Okay. My Name is Marina Tse. I have
25 been a teacher for 20 years, and I have taught regular school,
26 special education, and adult education. And I'm still
27 practicing teacher at the Duarte High School District.

28 I also see myself as a community person. Since I

1 started 20 years ago -- actually I have been in this country for
2 26 years, and I have been a volunteer in the community and
3 founded and co-founded different organizations in helping the
4 new immigrants, parents and students, to mainstream in
5 educational system, and also help different educational
6 organizations to promote quality education for kids.

7 And being a teacher on the front line, I feel
8 that I have the first-hand knowledge to offer to the Board, to
9 share my opinions and what I observed, what works, what doesn't
10 work in the school system.

11 So, I believe that I could be an asset to my
12 board.

13 CHAIRMAN LOCKYER: We're just all pointing out
14 here that one of your memberships is in the San Gabriel Valley
15 Cult Exchange.

16 We think probably somebody left off u-r-a-l, or
17 cultural, or something like that, but probably not the Cult
18 Exchange, is my guess.

19 MS. TSE: Not a cult. Cultural.

20 CHAIRMAN LOCKYER: All right.

21 MS. TSE: Cultural Exchange.

22 I'm not a cult member yet.

23 CHAIRMAN LOCKYER: Let me ask you this question I
24 was interested in with the last gentleman, and that's to just
25 comment on voucher initiatives that you've seen on the ballot or
26 otherwise were debated and discussed.

27 Any philosophy or attitude about voucher
28 education proposals?

1 MS. TSE: I opposed the 174 several years back
2 because I believe that the state has the obligation of
3 overseeing that each student is being educated with the standard
4 and also with the right assessment to them.

5 So far, I have not seen any enforcement mechanism
6 on the state level to protect the students from a cult member
7 opening up a school.

8 So, I think it's the people's decision, but I am
9 interested in promoting the best quality education for public
10 school.

11 CHAIRMAN LOCKYER: The Board, I think, just
12 adopted goals for this year, I believe, at a recent meeting.
13 Does that ring a bell? What were the goals for 1997?

14 MS. TSE: Yes.

15 CHAIRMAN LOCKYER: What were the top ones?

16 MS. TSE: Higher high school graduation
17 standards, which is, I am all for it. Also class size
18 reduction; that's one of them.

19 And we also realize that the high school students
20 need performing arts and sort of a higher standard. I think
21 that's really -- we really have to set up a higher standard for
22 students.

23 Being educated in Orient -- we have 180 school
24 days, and take away some of in-service days. As a teacher, I
25 really see that that should be a priority also. It's on our
26 priority, to try to get more days for the kids.

27 In the Orient, our average is 250 days or more.
28 When I went to school, we started at 8:00 o'clock, 8:00 to 4:00,

1 and Saturday morning. That's why a lot of new immigrants --

2 CHAIRMAN LOCKYER: Where did you go to school?

3 MS. TSE: In Taiwan.

4 And a lot of new immigrants are asking the school
5 system, how come we don't have Saturday morning school?

6 CHAIRMAN LOCKYER: It was 8:00 to when? How late
7 did it go?

8 MS. TSE: From 8:00 to 4:00. That's average. A
9 lot of countries have longer school days, and that's one of our
10 goals, to try to have a longer school day in the year and higher
11 standards.

12 CHAIRMAN LOCKYER: Other questions, Senators?

13 SENATOR HUGHES: What is your position on
14 bilingual education?

15 MS. TSE: If you look in my records, I have
16 always supported bilingual education.

17 SENATOR HUGHES: Why?

18 MS. TSE: Because the new immigrants, they do
19 need help with their own mother language. Especially older
20 students, because English is my second foreign language, and I
21 came to this country when I was older, so I understand that they
22 do need the help of bilingual education.

23 However, you know, like all other programs in the
24 process, we always have to look in to see what's working, what's
25 not working.

26 But I do support bilingual education. I think
27 it's needed at this point.

28 SENATOR HUGHES: How do you feel about a district

1 like Compton, and the fact that we've had to have state
2 intervention there?

3 MS. TSE: I used to work in the South Central
4 area in Los Angeles.

5 SENATOR HUGHES: Where?

6 MS. TSE: 98th Street Elementary School.

7 SENATOR HUGHES: That's in my district.

8 What would you have done for them? What did you
9 do for them when you worked there?

10 MS. TSE: I was an educational aid. But I am in
11 special ed., which means I help the kids needing the most help.

12 I feel that parenting education is the most
13 important for students and achieve, because they need modeling,
14 and they need extra attention from the teachers, especially from
15 the parents.

16 I have to use the term that everybody say, that
17 it take a whole village to educate a child. And I could see
18 that the most area needs help will be parenting.

19 The Compton School District, it's -- I think I
20 would like to see that all elements, including the parents, and
21 the private industry, the school system, all work together.
22 That's really needed.

23 SENATOR HUGHES: How do you feel about charter
24 schools?

25 MS. TSE: I don't have too much knowledge on it
26 because I'm new on the Board. But it's experiment that I'm
27 waiting for the report, the result of the charter school, see
28 how it works.

1 If not anything, we can learn from the process
2 because we do need changes in the state, the educational
3 system. And whatever report it is, we can learn from all those
4 reports what needs to be changed.

5 SENATOR HUGHES: Although African-American
6 students do not speak a foreign language per se, as we define
7 it, Los Angeles and Vallejo Unified School Districts have
8 Instituted something known as the standard English program.

9 How do you feel about the responsibility of
10 teachers teaching African-American students to speak standard
11 English?

12 MS. TSE: The school I work at, we have a
13 standard English program, so I actually see the program has a
14 lot of success.

15 The program is to teach Afro-American students
16 standard English. Like, every month we have a Toastmaster
17 Club, and the students stand up on the stage and speak standard
18 English. That's coming from the standard English program.

19 To me, it's a positive program. It was approved
20 in 1984 by the State Board, and now the Department of Education
21 is reviewing it to see if any changes need to be made.

22 But I feel that it's a very positive program.
23 It's teaching standard English, and I really would call for a
24 lot of school districts to support the program, which I have
25 said it on my board that I have a manual of it as a teacher.
26 Maybe we need to revise some of the contents, but I think it's
27 good for the students, and it has been helpful.

28 SENATOR HUGHES: How do you feel about the

1 voucher system? If someone in my community is not pleased with
2 the local public schools, should I, as a State Legislator, go
3 out and see if I can't get them a voucher? Since they don't
4 like the neighborhood school, they could shop around and find a
5 better school to send them to? How do you feel about that as a
6 teacher?

7 If you lived in a community where, say, your
8 children didn't have what you considered a good school, would
9 you pick up a voucher to send your children there, to another
10 school?

11 MS. TSE: I don't feel private schools are better
12 than public schools. Often people ask me, should I send my kids
13 to private school?

14 I told them, I said that, you know, the public
15 school has better teachers because we are credentialed. We also
16 have a full core curriculum that we make sure -- and also the
17 state has the mechanism to make sure that all students are up to
18 the performance.

19 So, I would ask them to try to choose a public
20 school maybe with a good performance. And that's why -- and
21 some how, choice school, if there's another opening for
22 students, I don't object to that at all.

23 But to the voucher, so far we do not have a good
24 system to make sure they enforce all the regulation or
25 standards, enforce the standards, and also make sure that they
26 benefit kids yet. I don't see that.

27 So, I don't see that the voucher system should be
28 going to be implemented.

1 SENATOR BRULTE: I have a question.

2 You said you didn't support Proposition 174. Can
3 you envision a voucher system that you could support?

4 MS. TSE: Because 174 did not have a mechanism to
5 ensure that every school has accountable for -- responsible for
6 students. And that's important, accountability model.

7 SENATOR BRULTE: If there was a model in a
8 voucher system that ensured accountability, could you support
9 that voucher system?

10 MS. TSE: If the people choose to it, if I see
11 the whole system would be working, it's iffy. I haven't thought
12 about it.

13 But it probably take a lot to convince me as a
14 public school teacher. I'm more interested in promoting public
15 school, not promoting -- improving our public school system.

16 But I do need to see a very complete mechanism
17 to make sure that the students are getting the right education.

18 CHAIRMAN LOCKYER: Senator Ayala.

19 SENATOR AYALA: I was just going to ask you, did
20 you say that you knew two foreign languages besides Chinese?

21 MS. TSE: I speak Chinese, but I speak many will
22 dialects, three dialects in Chinese: Mandarin, Cantonese, and
23 my own home town.

24 SENATOR AYALA: Do you know a number of foreign
25 languages as well?

26 MS. TSE: No, I'm sorry, only Chinese. Chinese
27 and English. It took me 26 years to learn English.

28 SENATOR AYALA: One of the questions I asked

1 Mr. Trigg, what is your position on using public funds for
2 private schools vouchers, K through 12? These are public funds
3 to use for private enterprise. Do you support that?

4 MS. TSE: Not at this point, because at this
5 point I really have not seen any system, any design, that will
6 hold a private school or voucher school accountable for it. I
7 have not seen that happening.

8 So, no, at this point no, I would not support.

9 SENATOR AYALA: Do you think you have enough
10 experience with charter schools to make up your mind whether
11 they're succeeding or failing at this point? Charter schools as
12 we know them today.

13 MS. TSE: I have heard pro and con, you know, by
14 talking to different teachers in the Los Angeles area. They
15 have to give us a full report. We don't have the report yet.

16 But I'm thinking, if they don't improve at the
17 end of the year, at the end of the five-year cycle, they have to
18 be dropped, drop out.

19 SENATOR AYALA: But if the local school boards
20 are not overseeing their functions, how do you know they're
21 failing?

22 MS. TSE: They are supposed to oversee their
23 function.

24 SENATOR AYALA: But they're not. What happens if
25 they don't?

26 MS. TSE: At the end of the fifth year cycle, if
27 they failed, then the state would drop them. They cannot be
28 charter schools any more.

1 SENATOR AYALA: Knowing what you know about
2 charter schools, would you support expansion of the charter
3 school system?

4 MS. TSE: Not if it is really necessary. If I
5 see unique cases with the support of Ms. Eastin, a lot of times
6 they would give us a reason why we support this, for whatever
7 good reason. I have to see a good reason for it.

8 SENATOR AYALA: You don't think there's enough
9 track record to make a determination at this point about the
10 successes of charter schools?

11 Yet we have some people who want to expand them,
12 and I'm told we don't have enough experience to do that.

13 MS. TSE: I haven't seen it being expanded too
14 large either, because we have 7,832 schools, and now we have
15 118, and also spread out within 1,000 school districts. So,
16 not every school district experiencing it.

17 So, I also haven't seen a lot of waivers for it,
18 so it's not exactly expanding, but I would look into why it's
19 needed to add to it.

20 SENATOR AYALA: It seems to me we don't have
21 enough experience today. Yet, two years ago, we expanded the
22 number of schools. I voted no. I don't think we knew enough
23 about them. We don't know enough about them today, yet we were
24 expanding those schools. There's probably another bill to do it
25 again.

26 But anyway, thank you for your testimony.

27 SENATOR HUGHES: May I ask a question?

28 You're a graduate of Cal State L.A.?

1 MS. TSE: Yes.

2 SENATOR HUGHES: Do you know they have a charter
3 school? Do you know anything about their charter school? Do
4 you know they have charter school there on the campus?

5 MS. TSE: I know they have an arts high school.

6 SENATOR HUGHES: No, not the arts. High School.
7 They have charter school that teaches elementary students.

8 Did you know anything about it?

9 MS. TSE: No, I'm sorry. But I graduated in
10 1978.

11 SENATOR HUGHES: But I'm telling you that you
12 need to know that the university you graduated from has now a
13 charter school.

14 Would you, as a Board Member, not be looking into
15 seeing how effective that is, and that's tied in with that
16 university campus?

17 MS. TSE: I would love to. I should go.

18 SENATOR HUGHES: I'm saying that to say the
19 charter schools that I know that have been most successful are
20 those that are tied into a university campus.

21 So, I might suggest to you, as you pursue your
22 goal, that you look into Cal State L.A.'s charter school to
23 evaluate what you think that's all about. You might even visit
24 it.

25 MS. TSE: Yes, thank you for the suggestion.
26 Actually, I only live about two miles from Cal State L.A. I
27 love to go to visit a charter school there.

28 SENATOR HUGHES: Okay, thank you.

1 CHAIRMAN LOCKYER: Other questions? Anyone
2 present that wishes to comment?

3 MS. KINKOR: Good afternoon, Mr. Chairman
4 Members of the Board.

5 My name is Ann Kinkor, and I am a parent of four
6 boys: Michael, Patrick, Kevin and Sean -- sounds Irish enough
7 -- three of whom have epilepsy.

8 I have a personal knowledge of this fine woman
9 because I served on the State Special Education Commission with
10 her. And I would like to say as an adjunct comment that through
11 my years on the Commission, I came to know Ms. Hughes,
12 Mr. Lockyer, Mr. Ayala, and I want to thank you as a parent for
13 all of your support of special ed., particularly the deaf
14 community.

15 But my comments, I thought you might like to hear
16 them because I had the privilege of working with Ms. Tse. And
17 we both served as Program Chair of the Commission together. And
18 I want to tell you that we both came from different perspectives
19 in our experience.

20 But I always knew that Marina had some very fine
21 qualities that she certainly demonstrated to the Commission.
22 First of all, when an issue was presented to the Commission,
23 such as, say, what's the least restrictive environment policy,
24 she would go to great lengths to understand it, to ask questions
25 on all sides of the Commission and constituencies.

26 I also felt that in each and every instance where
27 there was an issue before the Commission, she always asked about
28 the evaluation component of that issue or that program, and

1 lastly, accountability.

2 I was very, very impressed with the work that she
3 did on the Commission, and how hard she worked. I think if
4 anyone of you followed her around for one day, you'd be
5 exhausted because she's a high energy person that's so dedicated
6 to children.

7 And while I can unanimously say from a viewpoint
8 of the Epilepsy Foundation of America, whom I represent here
9 today, we support her 100 percent. And while not all parents
10 have the money to come here, some of them asked me to convey
11 their comments to you.

12 One of them was Mr. Comar, who's the State
13 Coordinator for the Children with Attention Deficit Disorder.
14 Their organization strongly supports the dedication that Marina
15 has given to children with attention deficit.

16 Also, Mr. And Mrs. Drake Kennedy, who are
17 representative of the Federation of Families of Children's
18 Mental Health. They asked that I convey strong support on
19 behalf of that organization, and also the team of Advocates for
20 Special Kids.

21 Collectively, all of our organizations represent
22 probably 400,000 to 500,000 parents in the State of California.
23 And in each and every instance where this fine woman has been
24 asked to address issues related to special education and
25 children with disabilities, she's done it with sensitivity, with
26 caring, with a thorough understanding of the issue, and she has
27 truly voted her conscience.

28 So, on behalf of all of us parents, all of the

1 kids we represent, I want to ask that you confirm Marina as a
2 Member of the Board of Education.

3 And I thank you for giving me the opportunity to
4 speak to you. I was very nervous. Thank you very much.

5 CHAIRMAN LOCKYER: Thank you, you've done fine.
6 What's the pleasure of the Committee? Senator
7 Lewis.

8 SENATOR LEWIS: Not withstanding the rather
9 compelling testimony of the last witness, I still think I need a
10 little more time to reflect on it. I would ask the courtesy to
11 put this over.

12 CHAIRMAN LOCKYER: We do that automatically when
13 a Member wants a week's delay.

14 But we've concluded the hearing. Thank you for
15 your comments. We appreciate them, and we'll stay in touch.

16 MS. TSE: Thank you.

17 [Thereupon. This portion of the
18 Senate Rules Committee hearing was
19 terminated at approximately 3:17 P.M.]

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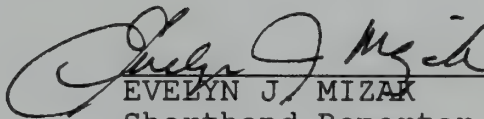
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

MEMBERS ABSENT

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

EDWARD S. ALAMEIDA, JR., Warden
Deuel Vocational Institution
Department of Corrections

RICHARD L. TATUM, State President
California Correctional Supervisors Organization

W.GARY LINDSEY, Warden
California State Prison
Salinas Valley

ROY MABRY, State President
California Association of Black Correctional Workers

FRANK R. SEARCY
Chicano Correctional Workers Association

JEFF THOMPSON
CCPOA

CONRAD APONTE
Citizens Advisory Committee, CTF-SVSP

GLENN A. MUELLER, Warden
California State Prison, Folsom
Department of Corrections

1 ANTHONY C. NEWLAND, Ph.D., Warden
2 California State Prison, Solano
3 Department of Corrections

4 DAVID EDWARDS
5 Private Company with Joint Venture Program

6 DAVID MADDOCK, Interim Director
7 California Department of Corrections
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX

Page

Proceedings 1

Governor's Appointees:

EDWARD S. ALAMEIDA, JR., Warden
Deuel Vocational Institution, Tracy
California Department of Corrections 1

Background and Experience 1

Witness in Support:

RICHARD TATUM, State President
California Correctional Supervisors Organization 3

Questions by SENATOR AYALA re:

Facility at 200 Percent Capacity 6

Staff Transferred from San Quentin Due
to Sexual Harassment Problem 6

Recent Flooding and Evacuation of
Institution 8

Over-time Management at Institution 9

Use of Permanent Intermittent Employees 10

Questions by SENATOR LEWIS re:

Number of Homicides at Deuel in
Recent Years 10

Questions by CHAIRMAN LOCKYER re:

Any Changes in Management Due to
Federal and State Changes in Credits for
Inmates 10

What Works in Reading Programs 11

Motion to Confirm 12

Committee Action 12

W. GARY LINDSEY, Warden
California State Prison
Salinas Valley 13

Background and Experience 13

Questions by CHAIRMAN LOCKYER re:

Uniqueness of Salinas Valley 14

Impact of Change in Family Visits
Policy 15

Questions by SENATOR AYALA re:

Classification of Institution as
Level IV and I 15

Transferring Staff from Other
Institutions to Salinas Valley 15

Questions by CHAIRMAN LOCKYER re:

Experience at Corcoran State Prison 16

Comments on Design of Salinas Valley 16

Feasibility of Mega Prison 17

Witnesses in Support:

ROY MABRY, State President
California Association of Black
Correctional Workers 18

FRANK SEARCY
Chicano Correctional Workers Association 18

CONRAD APONTE
Citizens Advisory Committee
CTF-SVSP 19

JEFF THOMPSON
California Correctional Peace Officers
Association 20

Questions by CHAIRMAN LOCKYER re:

Need to Update System of Classifying
Inmates 23

Questions by SENATOR AYALA re:

Problems with Illegal Use of
Drugs in Institution 23

Motion to Confirm 24

Committee Action 24

1	GLENN A. MUELLER, Warden	
2	California State Prison, Folsom	
3	California Department of Corrections	25

4	Background and Experience	25
---	---------------------------------	----

Questions by CHAIRMAN LOCKYER re:

5	Differences in Levels of Classification	26
---	---	----

6	Types of Inmate Programming	26
---	-----------------------------------	----

7	Assembly Bill that Would Require Inmates	
8	to Work 40 Hours a Week	27

Questions by SENATOR AYALA re:

9	Over-time at Folsom	28
---	---------------------------	----

10	Percentage of Permanent Intermittent	
11	Employees Used in Correctional Officer	
12	Capacity	29

Questions by SENATOR LEWIS re:

13	Press Reports about Fumes Causing	
14	Health Problems for Officers	30

Witness in Support:

15	JEFF THOMPSON	
16	California Correctional Peace Officers Association ...	31

Questions by SENATOR AYALA re:

17	Mysterious Illness Affecting Those	
18	in Vicinity of Tower 21	32

19	Motion to Confirm	34
----	-------------------------	----

20	Committee Action	34
----	------------------------	----

21	ANTHONY C. NEWLAND, Ph.D., Warden	
22	California State Prison, Solano	
23	California Department of Corrections	34

24	Background and Experience	34
----	---------------------------------	----

Witness in Opposition:

25	DAVID EDWARDS	
26	Private Company with Joint Venture Program	36

Questions by CHAIRMAN LOCKYER re:

Number of Prisoners in Program	37
Main Recurring Problem	38

Questions by CHAIRMAN LOCKYER re:

Types of Support Services	38
Types of Industries	39
External or Internal Use of Laundry	39
Hardest Part of Job	39
Motion to Confirm	40

Questions by CHAIRMAN LOCKYER re:

Lessons Learned as Parole Agent to Help Policy Makers	40
--	----

Questions by SENATOR AYALA re:

Gross Profits for Solano Prison Industries	41
Response by DAVID MADDOCK, Interim Director California Department of Corrections	42
Committee Action	43
Termination of Proceedings	43
Certificate of Reporter	44

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Now we get to tab three, gubernatorial appointees.

I apologize to those who have been waiting and standing. Unfortunately, this is the only room available we have for these meetings at this time.

I guess we'll start with Mr. Alameida. Good afternoon, sir.

MR. ALAMEIDA: Good afternoon, Senator.

CHAIRMAN LOCKYER: Looks like you may have a comment to begin with. That'd be appropriate.

MR. ALAMEIDA: If it's okay.

CHAIRMAN LOCKYER: Sure.

MR. ALAMEIDA: Good afternoon, Senator Lockyer, Members of the Committee.

I'd like to thank you very much for giving me this opportunity to appear before you to present my qualifications for the position of Warden at Deuel Vocational Institution.

My commitment to the public service now approaches 25 years, nearly 24 of which have been dedicated to the Department of Corrections. I'd like to share the more relevant aspects of my education and experience with you. I know you already have copies of my resume, so I will only highlight that experience which bears directly upon my responsibilities as the Warden at Deuel Vocational Institution.

From 1990 to -- excuse me, from 1980 to 1984, I

1 had the opportunity to be the Department's budget manager. As
2 such, I was responsible for the development, coordination, and
3 management of the Department of Corrections budget.

4 As the Associate Warden for Business Services at
5 both Folsom State Prison and the California Medical Facility at
6 Vacaville, I was responsible for managing the budgets of two of
7 the country's largest prisons. For example, during the time
8 that I served at Folsom, I was responsible for a budget of \$140
9 million, serving 7300 inmates and 2200 staff.

10 You know, they said that you wouldn't get dry
11 mouth here, and I didn't believe them. But I tell you the
12 truth, you do.

13 CHAIRMAN LOCKYER: We'll help you out.

14 MR. ALAMEIDA: During my tenure at both of these
15 prisons, my responsibilities included the activations and
16 business management of CMS South, now known as CSP Solano, and
17 New Folsom, now known as CSP Sacramento. Although my experience
18 is extensively financial and administrative, as the Chief Deputy
19 Warden at Folsom State Prison and Chief Deputy Warden at Deuel
20 Vocational Institution, I was directly responsible for the
21 management of inmate housing, inmate self-help, and religious,
22 programs, the academic and vocational training programs, and our
23 accredited independent schools, victim services projects, and
24 community services.

25 After the departure of the previous DVI Warden in
26 December of 1995, I was the acting warden until my appointment
27 by the Governor in June of 1996. As a warden, I am responsible
28 for managing all of the public safety and public service

activities of the institution for 3800 inmates, 980 staff, and an operating budget of \$68 million.

I'm honored to have been appointed by the Governor to this position, and I committed to the Governor and to the people of California to bring the best of my experience and training to this job.

I am equally honored, and a little bit nervous as you can tell, to have the opportunity to appear before you today for your consideration and evaluation.

Thank you for this opportunity, and I'll be happy to answer any questions you may have.

CHAIRMAN LOCKYER: Questions.

Let me ask also if there's anyone present who'd wish to comment? We're always willing to hear those matters. Yes, sir please.

Good afternoon, sir.

MR. TATUM: Hi, gentlemen. I'm Richard Tatum. I'm the State President of the California Correctional Supervisors Organization. A little nervous, too.

But basically, I'm a correctional lieutenant at Sierra Conservation Center in Jamestown. I've been a supervisor about 24 years out of my 29 years with the Department of Corrections.

With that, give you a little background on our organization, our organization's been in existence about five years. And basically what we do is, we represent the sergeants and lieutenants and correctional supervisors with the Department of Corrections. We started that as there was a need for

1 somebody to represent our folks. And we started, like I say,
2 five years ago, and that's what we do now.

3 Basically, the reason that we're here is to
4 support the people that support our people, and also people that
5 we feel are the type of people that we'd like to see as
6 wardens.

7 Mr. Alameida is one of the people that we feel is
8 the type of folks that -- what we want. Mr. Alameida supports
9 his supervisory people. I myself worked eight years at DVI in
10 Tracy as a sergeant, 1973 to 1981. I know a lot about Tracy and
11 how it operates. I know a lot of folks there that are still
12 there. At that time, during those years, it was the most
13 violent prison in the whole state and probably the country. Ran
14 about -- during the eight-year period I was there, there was 55
15 homicides during that period of time. It was a very violent
16 place.

17 DVI, like I say, has changed over a lot. The
18 whole gender of the institution and the Department of
19 Corrections has taken on a different view now.

20 Mr. Alameida is very accessible to his people.
21 He has an open door policy which we like, to be able to talk to
22 folks. Even though he doesn't have maybe the line experience
23 that we've talked about, in fact, me and Senator Ayala talked
24 about this a while back, about the line experience and things,
25 but I think that along with that line experience that you have,
26 you need to have the ability to communicate with your staff and
27 understand what's going on inside the institution.

28 We feel that he's that type of person. We are

1 real happy, our organization is, with the quality of the type of
2 wardens that they've put forward, each one of these folks that
3 they've put up for this confirmation. So, we're going to be
4 speaking towards each one of them in a positive note.

5 CHAIRMAN LOCKYER: Why don't I just note that for
6 the record with the next three?

7 MR. TATUM: You could do that.

8 CHAIRMAN LOCKYER: Unless you have a particular
9 thing to add.

10 MR. TATUM: No, basically, you know, I've
11 submitted a letter here to you concerning these folks. And each
12 one of them, I'm saying, we're real apprehensive and in actually
13 speaking forward on folks that we feel wouldn't meet that.

14 But Mr. Mueller, and Mr. Lindsey and Mr. Alameida
15 and these folks are the type of people that we're real pleased
16 with the Department's selection on these folks. It's the type
17 of wardens that we need.

18 Like I say, I've gone through a lot of -- in my
19 time, gone through a lot of wardens, a lot of directors in my
20 career. Like I say, Mr. Alameida's the type of person that this
21 Department of Corrections, with all the things that are going on
22 with it right now, this is type of person that we need. We feel
23 he's basically a very ethical person, and the Department of
24 Corrections needs some ethical people.

25 I guess that's about.

26 CHAIRMAN LOCKYER: Well, additionally, he's going
27 to have to be the Director in the next administration. He
28 doesn't know that yet.

1 [Laughter.]

2 MR. ALAMEIDA: I don't have enough life savers,
3 Senator.

4 CHAIRMAN LOCKYER: Thank you.

5 Senator Ayala, did you have a question?

6 SENATOR AYALA: I have a couple of questions.

7 I have note that the facility's over 200 percent
8 capacity, Deuel Vocational Institution. Is that where you're
9 the warden?

10 MR. ALAMEIDA: Yes, Senator.

11 SENATOR AYALA: That is over 200 percent capacity
12 in terms of inmates in place there?

13 MR. ALAMEIDA: That's correct, Senator. We have
14 inmates in all of our cells, in day rooms, and in our gymnasium.

15 SENATOR AYALA: Do you have an individual on your
16 staff that was transferred from San Quentin because of a
17 harassment problem? The Supreme Court agreed to a \$1.3 million
18 cost to the taxpayers as a result this individuals that's on
19 your staff now.

20 How do you expect to handle that individual as it
21 pertains to female colleagues? How do you monitor an
22 individual like that.

23 MR. ALAMEIDA: I don't believe I've had anybody
24 transferred from San Quentin with that type of background.

25 SENATOR AYALA: We have a record here where it
26 appears you have on your staff an individual transferred from
27 San Quentin State Prison. The State Supreme Court recently let
28 stand a \$1.3 million sexual harassment damage award to a female

1 correctional officer who had been harassed by this individual.

2 I don't want to give you the name in public, but
3 I do have the name if you want it.

4 Are you not aware of that?

5 MR. ALAMEIDA: I'm aware of a manager who
6 transferred from Central Office Planning and Construction
7 Division to Deuel Vocational Institution who worked at San
8 Quentin and who may be the name of the individual that you're
9 referring to.

10 If that is indeed the individual, prior to his
11 coming to Deuel Vocational Institution, he and I had a
12 three-and-a-half hour meeting in which I -- at that time I set
13 the expectations I have of managers, whether they be he or
14 anyone else who works at Deuel Vocational Institution.

15 We're very pro-active at that institution in
16 terms of making sure that those expectations are set. We do
17 training on an annual basis which is mandatory. We visit the
18 site of the institution on a frequent basis.

19 We do not take any latitude with individuals who
20 violate the policies of sexual harassment prevention at the
21 institution. We are very pro-active in terms of investigating
22 matters and dealing with those individuals who don't follow that
23 policy.

24 I think if you will speak to the individuals who
25 work at Deuel Vocational Institution, you'll find that that is
26 the case. We have a very active EEO program there, and we have
27 access to individuals who represent our EEO within the
28 institution, whether it be myself, the Chief Deputy Warden,

1 other managers in the institution, or line staff on all watches.

2 So, I think, Senator Ayala, that we do a good job
3 at DVI about that.

4 SENATOR AYALA: As you well know, we are
5 experiencing a lot of problems with the Department of
6 Corrections and Youth Authority. We don't need those kind of
7 problems.

8 MR. ALAMEIDA: I agree.

9 SENATOR AYALA: With the recent floods, you had
10 to move the inmates from that institution away from the flooding
11 waters that approached the prison?

12 MR. ALAMEIDA: Yes, we did. We moved
13 approximately 1100 inmates to other reception centers throughout
14 the State of California. We also moved 1400 head of our dairy
15 farm at the same time.

16 We were gradually becoming an island. We were a
17 peninsula with water on three sides of the institution. And for
18 a period of about 10 to 15 days, staff throughout the
19 institution did an exemplary job to prepare us for the
20 eventuality of a flood, which actually didn't happen, so we were
21 very pleased to see that.

22 SENATOR AYALA: Your folks responded to that
23 major task in good shape?

24 MR. ALAMEIDA: Extremely well, Senator.

25 SENATOR AYALA: Is that going to be a condition
26 we're going to be experiencing every time we have a flooding
27 condition in that area?

28 MR. ALAMEIDA: I hope not.

1 SENATOR AYALA: I do, too, but I mean, why this
2 year?

3 MR. ALAMEIDA: Well, we're in a flood plain at
4 Deuel Vocational Institution. In 1983, we were flooded as well
5 from the east side of the prison. At that time, there was some
6 construction done to build a levee in the institution to prevent
7 the waters from going into the farmer's land that is adjacent to
8 the institution.

9 Unfortunately this time, as you're well aware, a
10 number of levees broke throughout the rivers of California. In
11 this case, it broke on the south side of the institution and
12 started to flood us from that direction.

13 I can't tell you whether acts of God will affect
14 us each and every year. I pray it doesn't. One time was enough
15 for me, but I do know this, that given the fact that we've gone
16 through this this time, we're well prepared for it should it
17 happen again.

18 SENATOR AYALA: Your institution appears to
19 manage the over-time and sick leave pretty good, normally
20 compared to our institutions. However, in August, you had
21 174,582 for that month, and then you jumped to 345,889.

22 Why did that occur?

23 MR. ALAMEIDA: We were doing training in that
24 particular month relative to the mental health program, where we
25 had to train all of our staff on, I think, it was an eight-hour
26 segment on mental health, where there was suicide prevention,
27 dealing with inmates with mental health problems, how to
28 associate those and get those individuals to proper care and

1 treatment. So, that was a special program which raised the
2 over-time in IST, in-service-training, at that time.

3 SENATOR AYALA: Do you take advantage of the
4 permanent intermittent employees, so-called PIEs, to help you
5 with the over-time at that institution?

6 MR. ALAMEIDA: Yes, I do, Senator, actively.

7 SENATOR AYALA: That's all I have for now, Mr.
8 Chairman.

9 CHAIRMAN LOCKYER: Senator Lewis.

10 SENATOR LEWIS: I was struck by the prior witness
11 saying that he was at the Tracy facility for eight years, and
12 during that time, I think it was back in the '70s, there were
13 55 homicides.

14 I'm just curious in the last few years how that
15 compares?

16 MR. ALAMEIDA: We haven't had any, Senator.

17 SENATOR LEWIS: In what period of time?

18 MR. ALAMEIDA: No homicides, Senator, in the last
19 few years.

20 SENATOR LEWIS: Thank you.

21 CHAIRMAN LOCKYER: Can you inform us as to
22 whether there's been any change in your capacity to manage the
23 population in the institution because of our both federal and
24 state changes in credits, good time, work time, ed. credits?
25 Does that seem to make any difference in your responsibilities?

26 MR. ALAMEIDA: It's probably affected us most,
27 Senator, in our reception centers, since half of Deuel
28 Vocational Institution, for the most part, is a reception

1 center. So, our intake has increased dramatically.

2 I can't necessarily say to you that it's fully
3 associated with the change in good time credits, the three
4 strikes law, or other policy changes in the State of California,
5 but I do know that our intake is up. That's one of the biggest
6 difficulties we have in managing that influx from week to week
7 and month to month.

8 CHAIRMAN LOCKYER: But no extraordinary problems
9 in just keeping the institution stable and safe?

10 MR. ALAMEIDA: No, Senator, we do not.

11 CHAIRMAN LOCKYER: As I recall, you have an
12 active reading program at Deuel. Have you reached any
13 conclusions from your various experiences about what works in
14 teaching inmates to read and prepare for work outside?

15 MR. ALAMEIDA: I think we have a policy at Deuel
16 Vocational Institution that education is foremost.

17 When an inmate comes into our reception center or
18 comes into our institution, they're tested in terms of their
19 reading level. If they haven't attained a ninth grade reading
20 level, then whether they are in an assignment or scheduled to go
21 into an assignment, if an opening arises in our education
22 program, that's where they'll be placed until they have achieved
23 a ninth grade reading level.

24 So, we get many inmates who are facilitated
25 through the academic program or the vocational program in that
26 means, some of whom do not appreciate that, but I think in the
27 long term, it serves us all well to do that.

28 CHAIRMAN LOCKYER: What kind of a waiting list do

1 you have?

2 MR. ALAMEIDA: Right now, our waiting list is
3 around 25 in the academic program. We have a number of academic
4 classes yet to establish as part of a recent activation, and
5 we're in the midst of doing that.

6 CHAIRMAN LOCKYER: Other questions? What's the
7 pleasure of the Committee?

8 SENATOR LEWIS: Move confirmation.

9 CHAIRMAN LOCKYER: We have a motion by Senator
10 Lewis to recommend confirmation. Call the roll, if you would.

11 CHAIRMAN LOCKYER: Did you want to conclude in
12 any way, or do you mind if we just get this over with?

13 MR. ALAMEIDA: I don't mind at all, Senator.

14 SECRETARY WEBB: Senator Ayala.

15 SENATOR AYALA: Aye.

16 SECRETARY WEBB: Ayala Aye. Senator Brulte.
17 Senator Hughes. Senator Lewis.

18 SENATOR LEWIS: Aye.

19 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

20 CHAIRMAN LOCKYER: Aye.

21 SECRETARY WEBB: Lockyer Aye. Three to zero.

22 [Later in the hearing, Senator

23 Brulte returned and added his

24 aye vote, making the final vote

25 four to zero for confirmation.]

26 CHAIRMAN LOCKYER: Good luck, sir.

27 MR. ALAMEIDA: Thank you, Senator.

28 CHAIRMAN LOCKYER: Okay, Mr. Lindsey is next,

1 Salinas Valley.

2 Good afternoon, sir.

3 MR. LINDSEY: Good afternoon.

4 CHAIRMAN LOCKYER: Did you want to begin with any
5 opening comment?

6 MR. LINDSEY: Yes, I want to thank you, Mr.
7 Chairman, and the Members of the Committee for allowing me to
8 appear here today.

9 My name is a Gary Lindsey. I have 32 years in
10 the Department of Corrections. I began in 1965 as a
11 correctional officer at the California Men's Colony. While as a
12 correctional officer, I completed my Associate of Arts degree
13 and Bachelor of Science degree.

14 I've worked at seven institutions. I've been
15 involved in activation of four. I've been involved in almost
16 every institutional peace officer rank that there is. I was
17 appointed as Acting Warden at the Salinas Valley State Prison.

18 CHAIRMAN LOCKYER: What did you start at?

19 MR. LINDSEY: Correctional officer.

20 As I said, I was appointed as Acting Warden in
21 April of 1996. I have approximately 13 years at management
22 level within the CDC.

23 CHAIRMAN LOCKYER: We have a little background
24 work that's done, as you probably know. I guess there were a
25 number of issues that were raised when they were on site, but
26 they seem to mostly be matters that are collective bargaining
27 issues.

28 MR. LINDSEY: That's correct, sir.

1 CHAIRMAN LOCKYER: And I guess those are matters
2 being discussed in a sort of more general context, not just your
3 prison facility: budgets, and staffing patterns, and so on.

4 Is there anything like that that you find unique
5 or unusual to Salinas Valley? Is the culture different in that
6 prison than other places you've served?

7 MR. LINDSEY: Well, Salinas Valley State Prison
8 is totally a Level IV except for a small Level I facility. As
9 you can imagine, our Level IVs are some of the most active
10 acting out inmates that we have.

11 CHAIRMAN LOCKYER: Right.

12 MR. LINDSEY: That is probably one of the unique
13 things to it.

14 It is a state of the art institution, and it has
15 two sides to the Level IV. And then, in dealing with the
16 staffing that come aboard, training them to deal with that type
17 of inmates.

18 CHAIRMAN LOCKYER: So, in that respect there's
19 different staffing needs and so on?

20 MR. LINDSEY: To some degree, yes, sir. All
21 correctional officers go through the academy, the basic academy,
22 and complete that. Then they come on grounds and they go
23 through a 40-hour institution familiarization at the
24 institution.

25 Other than your administrative segregation cases
26 or your special housing cases, there are no other specialized
27 training except for your CERT, or negotiation management team.

28 CHAIRMAN LOCKYER: Have you found that the change

1 in family visits policy has any noticeable impact on prison
2 Environments?

3 MR. LINDSEY: I have inmates that appeal it.
4 They talk to me when I'm on the yard and such about it. They're
5 not happy about it, but to say that it's had a tremendous
6 negative impact, no it has not.

7 CHAIRMAN LOCKYER: You can't see any change?

8 MR. LINDSEY: At this time. We've only been open
9 eleven months, sir.

10 CHAIRMAN LOCKYER: Other questions from either
11 Senator Lewis or Ayala?

12 SENATOR AYALA: Your institution is classified as
13 a IV?

14 MR. LINDSEY: Yes, sir.

15 SENATOR AYALA: Maximum security with a Class I
16 as well?

17 MR. LINDSEY: Yes.

18 SENATOR AYALA: And its a fairly new institution.
19 How old is it now?

20 MR. LINDSEY: We've only received inmates eleven
21 months, sir.

22 SENATOR AYALA: You didn't have a chance to
23 encounter any problems there yet, have you?

24 MR. LINDSEY: Well, like all institutions, you
25 have some difficulties.

26 SENATOR AYALA: Are they being transferred from
27 other institutions to this one here?

28 MR. LINDSEY: Yes, they have. Approximately 62

1 percent of my staff came out of the academy as far as
2 correctional officers. The rest were transfers.

3 SENATOR AYALA: I don't have any more questions.

4 CHAIRMAN LOCKYER: I note you were an Associate
5 at Corcoran.

6 MR. LINDSEY: Yes, sir.

7 CHAIRMAN LOCKYER: Which, of course, is often in
8 the news these days.

9 What was your experience at the prison? Would
10 you have expected the problems to have come up that have been
11 commented on in recent months?

12 MR. LINDSEY: No, I wouldn't have expected it,
13 because in my time there, I looked at every incident package
14 that came through me as Associate Warden. My staff monitored
15 it, and I was very proud of the staff there, worked very hard.

16 You always have some problems, but for it to get
17 to the size of the allegations that I hear, no, I wouldn't have.

18 CHAIRMAN LOCKYER: Since you're operating one of
19 the newer facilities, could you share any thought or comment
20 about design things? Just sort of generally, not necessarily
21 where the light plug is, but just things we ought to know about
22 the design of the facilities. Are there good or bad things that
23 we ought to think about when we do the next ones?

24 MR. LINDSEY: There's a lot of issues on design,
25 but issues that I would think you and your Committee might be
26 considering is the electric fence and how it's faring.

27 CHAIRMAN LOCKYER: Yes.

28 MR. LINDSEY: It's been very useful at my

1 institution. We have not experienced a large amount of down
2 time. We've had a very small kill ratio, if you want to say, of
3 birds or any small animals. And it does save millions of
4 dollars each year in that you don't have to man the towers up
5 there. Basically, it saves about 48 positions in my institution
6 alone. So, to me, it is very good.

7 As far as the housing, our typical 270 housing is
8 an excellent housing unit, designed for Level IIIs and it can be
9 used as a Level IV. The 180 housing unit is also -- can be used
10 as a security housing unit, so it's an excellent unit for
11 dealing with the higher custody general population Level IV
12 inmates.

13 CHAIRMAN LOCKYER: If we tripled the size of it
14 at one location like that, would it work?

15 MR. LINDSEY: You would have some problems that
16 you would need to deal with, such as water availability, garbage
17 disposal --

18 CHAIRMAN LOCKYER: Assuming there's water, I
19 don't mean necessarily there, but that idea, you know, the mega
20 prison idea has been talked about on occasion.

21 MR. LINDSEY: If you tripled the size of it, and
22 naturally you put in appropriate staffing for maintenance and
23 operation of it, yeah, it would probably work.

24 CHAIRMAN LOCKYER: Other questions? Did anyone
25 wish to comment that we haven't heard from? Supportive comments
26 I urge being brief. Negative ones we'll dig into a little
27 more.

28 MR. MABRY: Thank you, Senator Lockyer and

1 Committee. Roy Mabry, California Association of Black
2 Correctional Workers. I'm the State President for the
3 organization.

4 Want to show full support for all of the wardens
5 that's up for confirmation.

6 Wanted to point out something during Warden
7 Alameida's comments earlier about a community program he has
8 similar to that of Scared Straight. A bunch of kids that he
9 brings into the institution and walk them through a system of
10 what occurs in prison. They get a chance to share that.

11 But anyway, Senator, for Warden Lindsey here, one
12 hundred percent support, and he's a good man for the
13 job.

14 CHAIRMAN LOCKYER: Thank you.

15 Yes, sir.

16 MR. SEARCY: Good afternoon, Senator and
17 Committee Members.

18 First of all, with your permission, Senator, I'd
19 like to for the record, even though it's after the fact, CCWA,
20 Chicano Correctional Workers Association, is in support of Mr.
21 Alameida.

22 CHAIRMAN LOCKYER: We have you down for all.

23 MR. SEARCY: Thank you, and it's for all and for
24 Mr. Lindsey.

25 CHAIRMAN LOCKYER: Yes.

26 MR. SEARCY: One comment that I'd like to make
27 regarding Mr. Lindsey -- two comments. One is that he is
28 obviously very varied in his experience in the correctional

1 field.

2 The other one is that him managing and
3 administrating a new institution, it's obvious that he is -- his
4 institution is being a fish bowl, so we can see where everything
5 is being looked at. And everything being looked at so far has
6 been satisfactory. So, that is obvious that he is an
7 appropriate administrator.

8 With that, again, Senator, I want to follow
9 Senator Kopp's mode of 30 seconds. I think I have about 29
10 seconds.

11 Thank you.

12 CHAIRMAN LOCKYER: Thank you.

13 Yes, sir.

14 MR. APONTE: Senator Lockyer, Members of the
15 Committee, I'm Conrad Aponte, Jr., from City of Gonzales, and
16 I'm the CAC Chairperson for that area for both prisons. CAC for
17 the Salinas Valley State Prison and Soledad since 1985.

18 I've been with the committee and been through the
19 state, through many prisons, but in the area I also have worked
20 myself with many wardens, a few of them, in the past. I have
21 found out since Warden Lindsey was assigned to that prison in
22 there as manager first, and as Warden, he's been doing an
23 outstanding job, working day and night sometimes during the
24 construction of the prison. .

25 I believe he's very well qualified. He's very
26 well liked in the community. And the Citizens Advisory
27 Committee, we are very happy to have him in the area and work
28 with him. I hope he can be confirmed by the this Committee

1 today.

2 CHAIRMAN LOCKYER: That's about to happen. Thank
3 you, sir.

4 Mr. Thompson.

5 MR. THOMPSON: Thank you, Senator Lockyer,
6 Members of the Committee. I'm pleased to follow the police
7 chief from my old home town of Gonzales. Not many left from my
8 class.

9 The California Correctional Peace Officers
10 Association represents the 24,000 peace officers in CDC and CYA.
11 We have a lot of concerns that come up in any given facility.
12 Salinas Valley State Prison is no different, especially since
13 it is a new prison being brought on line.

14 One of the unfortunate practices is, they often
15 are saddled with the bottom of the barrel from other prisons
16 that send their problem kids over to the new joint and let the
17 new warden have to scramble and deal with it.

18 SENATOR BRULTE: Is that inmates or CCPOA
19 members?

20 [Laughter.]

21 MR. THOMPSON: No. Touche, all right. Senator
22 Jim, I'll tell you that part of the problem, too, is it's about
23 70-75 percent brand new staff. That also complicates matters,
24 and then given that you have a Level IV institution, so maybe 34
25 percent of the problem officers.

26 But given with the brand new institution, Level
27 IV, a lot of new staff, tough inmate population, you're looking
28 at a real tall order. So, the chapter, the officers that are

1 there, have expressed a great concern about their safety. There
2 is a high level of violence there.

3 We are looking to improve that as much as we can.
4 We have had a very positive meeting with Warden Gary Lindsey a
5 couple of weeks ago. I should state for the record that, as you
6 know, over the years this Association has really dealt with the
7 nuts and bolts of prison operations and often feels very
8 strongly about how to help in that area, because it does affect
9 our officers on the line.

10 For the first time that major questions and
11 concerns about staff safety and operations have come up, we have
12 decided to take it a little bit different tack and work on
13 improving the communications to deal not only with the issues at
14 hand, but also to ensure that future issues that crop up can be
15 dealt with efficiently, effectively, with good communications at
16 the local level.

17 Our Chapter President, Gino Coranza, other
18 members of that chapter, and indeed, the statewide leadership of
19 the Association, met with Warden Lindsey, members of his staff,
20 and had a very good meeting, airing out key issues. Of course,
21 one of those being the concern about the adequacy of staffing.

22 There is discussion ongoing with the
23 administration on those concerns, so we will defer to that
24 process, but indicate for the Committee that that is a major
25 issue for us because that's the back-up. If you have to,
26 because of staffing, take officers off a main yard and put them
27 on medical escort or what have you, and you have no yard
28 coverage, obviously, there are officers who are vulnerable.

1 Also, we are concerned with getting adequate
2 training. There still does need to be training for a lot of
3 these brand new officers on gang identification, drug issues,
4 the enhanced out-patient procedures dealing with the so-called
5 crazies that we have. There's a building that's devoted to just
6 those kinds of psychiatric problem inmates.

7 When you have so many, and have so many new
8 officers, the need for training and getting that on line is
9 extremely important. And those are some areas that still need
10 to be addressed, so we're going to be pushing to the best of our
11 ability to have those things dealt with.

12 With that we are pleased to make these comments
13 to you. We think that we're going to have a very positive
14 working relationship with Mr. Lindsey.

15 Appreciate you taking the time to hear our
16 testimony.

17 CHAIRMAN LOCKYER: Thank you.

18 We were just all noticing, Mr. Thompson, your
19 letter to the Warden that said there are some of these matters.
20 But you'd prefer to just continue to work them out traditionally
21 at the site, rather than trying to do it here, and that makes
22 some sense.

23 MR. THOMPSON: We think does make as much sense
24 to work out what we can. So many of these issues are just a
25 need to enhance communication.

26 CHAIRMAN LOCKYER: They're details.

27 MR. THOMPSON: Commit to an ongoing schedule.
28 For example, Warden Lindsey has a meeting with our Chapter

1 President tomorrow, and I think they're regularly scheduled here
2 for the future to continue to deal with these things.

3 CHAIRMAN LOCKYER: Thank you.

4 Warden, it sometimes is suggested, too, that we
5 need to refine and update our system of classifying inmates, at
6 least try to develop better predictors of post release
7 behavior.

8 Have you heard that discussion in your own years?

9 MR. LINDSEY: I'm aware --

10 CHAIRMAN LOCKYER: Do you have any reaction to
11 the idea?

12 MR. LINDSEY: Well, I'm aware that the Department
13 is preparing a study for legislation. I believe Mr. Maddock can
14 relate to that if he wants to.

15 CHAIRMAN LOCKYER: Any other?

16 SENATOR AYALA: I just want to ask the Warden,
17 the illegal use of drugs in the prisons has always concerned
18 me. Yours is a fairly new prison, Salinas Valley.

19 Are there any problems today in terms of illegal
20 drugs and alcohol being used by inmates?

21 MR. LINDSEY: Yes, there is. In any institution
22 at any given time, you may be subject to having staff or
23 visitors who bring in drugs. But you have to deal with it on an
24 absolutely zero tolerance. You constantly investigate, you
25 follow up all rumors and leads, and you observe the inmates to
26 see how they're acting.

27 SENATOR AYALA: There's no way you can stop that?

28 MR. LINDSEY: Other than totally skin searching

1 everybody that comes through your front gate, sir, I would find
2 it very difficult because we've had visitors bring them in
3 children's diapers. We have staff that bring it in.

4 SENATOR AYALA: I've heard stories that the staff
5 sometimes brings it in to the inmates. Any evidence of that?

6 MR. LINDSEY: I currently have an investigation
7 going on just of that nature, yes, sir.

8 SENATOR AYALA: Thank you.

9 CHAIRMAN LOCKYER: I guess we're ready for
10 Senator Brulte's motion.

11 SENATOR BRULTE: Move it.

12 CHAIRMAN LOCKYER: We have motion to confirm.
13 Call the roll, if you will.

14 SECRETARY WEBB: Senator Ayala.

15 SENATOR AYALA: Aye.

16 SECRETARY WEBB: Ayala Aye. Senator Brulte.

17 SENATOR BRULTE: Aye.

18 SECRETARY WEBB: Brulte Aye. Senator Hughes.
19 Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

22 CHAIRMAN LOCKYER: Aye.

23 SECRETARY WEBB: Lockyer Aye. Four to zero.

24 CHAIRMAN LOCKYER: Congratulations, sir. Good
25 luck.

26 MR. LINDSEY: Thank you.

27 CHAIRMAN LOCKYER: All right, Mr. Mueller.

28 You know, we ought to just turn one of these down

1 once in a while or they won't come and see us any more.

2 [Laughter.]

3 CHAIRMAN LOCKYER: We only have two more left.

4 Come on up sir. Good afternoon, sir.

5 MR. MUELLER: Good afternoon, sir. I sure don't
6 hope that that was starting a new process.

7 CHAIRMAN LOCKYER: No, it's all right.

8 MR. MUELLER: Thank you.

9 I want to thank you for allowing me to come here
10 and meeting this full committee.

11 I want to give a real quick background about
12 myself and where I'm from. I was originally raised in Minnesota
13 on a farm. I went into the Marine Corps, and after I got out of
14 the Marine Corps, I went back there. And I think the second
15 year, the second winter when the snow melted, I decided to pack
16 up and get back to California where I belonged. I've been out
17 here ever since then.

18 I've been with the Department 29 years.

19 CHAIRMAN LOCKYER: Have you been in any of the
20 farm prisons at all?

21 MR. MUELLER: No, I haven't. No, sir.

22 But I've been with the Department 29 years.
23 During that 29-year period, I've worked at five different
24 institutions. I've been on the line. I started out as a
25 correctional officer. I was that for 10 years. Was a sergeant
26 lieutenant. I even went over and became a food manager for a
27 period of time on a training and development assignment to round
28 out my career a little bit, so to speak, and I'd get a better

1 idea of how the business side worked.

2 And in working those different institutions, I've
3 worked at all levels from a Level I to a Level IV. The
4 experience that I've had since I've been appointed at Folsom and
5 been able to work with the budget there, and ensuring that our
6 budget is always in line, I think, has been one of the things
7 that I've done at all institutions where I've been at.

8 One of the things you said, to make it short, so
9 with that, I'm going to end it.

10 CHAIRMAN LOCKYER: That's okay.

11 You're essentially a Level II facility now.
12 Looking at where you've been, I'm trying to get you to comment
13 on the differences in the different classifications. You were
14 at --

15 MR. MUELLER: I was at Folsom when it was
16 originally a Level IV during the days --

17 CHAIRMAN LOCKYER: So, you've seen --

18 MR. MUELLER: Both sides of it, and I can assure
19 you that I definitely appreciate working at a Level II
20 institution as opposed to a Level IV. I can sympathize with
21 those other wardens who have deal with those type of inmates.

22 It's a lot easier and a lot better. We're able
23 to do a lot more programs and do a lot of better things with
24 them.

25 CHAIRMAN LOCKYER: What kind of programming?

26 MR. MUELLER: We've got a lot of education
27 programs, work programs. We have prison industries. One of the
28 best programs that we've instituted recently is our Computers

1 for Schools, which is a program where we take computers which
2 are donated to the Department of Corrections through the
3 Detweiler Foundation and totally revamp those, and then donate
4 them back to the schools.

5 It's a great program where inmates are able to
6 get some real training, meaningful training that they can go
7 right out to the street and go to work in.

8 CHAIRMAN LOCKYER: Is that happening at other
9 sites other than Folsom?

10 MR. MUELLER: Yes, it is. I believe there's 11
11 or 12 institutions.

12 CHAIRMAN LOCKYER: That are doing this, the
13 computer one?

14 MR. MUELLER: Yes. We were one of the original
15 ones that started. And there was four original institutions,
16 and now there's, I think, 11 or 12.

17 CHAIRMAN LOCKYER: How many inmates do you have
18 associated with that.

19 MR. MUELLER: The total programs, there's about
20 30 inmates working within that program itself, and those that
21 are going through the training, getting them ready to eventually
22 get into that program. We do a complete vocational training
23 program there that teaches repair of those.

24 CHAIRMAN LOCKYER: I think there's a bill moving
25 in the Assembly that says inmates got to work for 40 hours a
26 week.

27 How are you going to put them to work if that's
28 the law?

1 MR. MUELLER: Right now, in most cases, we're
2 getting very close to that 40 hours a week.

3 CHAIRMAN LOCKYER: Are you getting close to it?

4 MR. MUELLER: The problem with it is, generally
5 the staffing, the staff that work that, it's an 8-hour day for
6 them, so the processing in and out time makes it very difficult
7 to come to the exact. But we're running about seven-and-a-half
8 in a lot of those. The full 8 hours would be very difficult.

9 CHAIRMAN LOCKYER: And I have a little concern
10 about security in some of the institutions if you try to move
11 people around for 40 hours work, but that wouldn't necessarily
12 be a problem for you.

13 MR. MUELLER: In the Level IIs it's a lot easier.
14 We'd have to do some overlap as far as staffing and that, but
15 it's more convenient than in a Level III or IV.

16 CHAIRMAN LOCKYER: Other questions? Senator
17 Ayala.

18 SENATOR AYALA: The over-time at Folsom is also
19 kind of up and down. May of this year, you had for the month of
20 may, 69,504 in over-time. We're talking about dollars. The
21 next month, 129,950. In August, you had 86,242 and it jumped in
22 September, the following month, to 132,178.

23 What accounts for those differences..

24 MR. MUELLER: Usually the differences are based
25 on training programs that we have to get in. We just got into
26 -- I believe the one in September there is when we were doing a
27 bunch of training for the psychiatric patients that we had in
28 there. This training is mandated, so we had to put it on. When

1 we have to do things in a very short period of time, it gets
2 very costly. Those numbers will jump real quick on us.

3 Normally, we are able to spread that training
4 out over a year. In these particular cases, we weren't able to
5 because we had a deadline. We can use permanent intermittent
6 officers and other things to reduce that over-time tremendously,
7 and in most cases, we do.

8 SENATOR AYALA: Are you attempting to go keep the
9 over-time down?

10 MR. MUELLER: My goal is to bring over-time down
11 to zero.

12 SENATOR AYALA: CCPOA won't like you.

13 MR. MUELLER: Well --

14 SENATOR AYALA: That doesn't matter; does it?

15 MR. MUELLER: I respond to the State of
16 California and the budget. That's my first concern.

17 SENATOR AYALA: There you go.

18 What percentage of the permanent intermittent
19 employees do you use for correctional officer category?

20 MR. MUELLER: I would say we probably have about
21 90 percent of the permanent intermittents that we have are in
22 the CO capacity.

23 SENATOR AYALA: Do you feel that the Legislature
24 should tell your wardens when to use and not to use PIEs in your
25 operation.

26 MR. MUELLER: I believe that any good manager is
27 able to work that out so that we can use them fairly and in an
28 equitable manner, and so that that we're working them enough

1 hours that they can live on. I think that if we bring too many
2 in, occasionally, that it hurts us in that aspect, but it's one
3 way of us being able to meet our budgets.

4 SENATOR AYALA: The next question's already been
5 answered when you say you'd like to keep the over-time to
6 nothing.

7 MR. MUELLER: Yes, sir.

8 SENATOR AYALA: That answers the next question.
9 That's all the questions I have, Mr. Chairman.

10 SENATOR LEWIS: There were some press reports
11 relative to fumes that were causing health problems for guards?

12 MR. MUELLER: Yes, sir.

13 SENATOR LEWIS: Is there any update on that
14 situation?

15 MR. MUELLER: We're doing testing with different
16 companies almost on weekly basis. We have not been able to find
17 what the source is. We were trying number of different things.

18 It's something that's a major concern of mine.
19 This goes back to about 1985, when we started doing test sites
20 up there. It's a very old prison. The prison first opened up
21 in 1880, and who knows what's been dumped or whatever that's
22 been out there.

23 We've done many test sites. We have some test
24 wells that are there that they monitor on a regular basis. I
25 have had a number of different companies come out. In fact,
26 we're having more. And anything that it takes, any suggestions
27 that's out there that can lead us to this ultimate result, we're
28 going to go for.

1 CHAIRMAN LOCKYER: Anyone present? The
2 supporters, you're still supporting, right? We'll just note
3 that for the record. That will be okay.

4 Any opposition present? Mr. Thompson is another
5 supporter.

6 MR. THOMPSON: Thank you, Mr. Chairman, Members.
7 Again, Jeff Thompson with the CCPOA.

8 We have also had a great concern, as Senator
9 Lewis has touched on, with the toxics problem out on site.
10 Oftentimes, there is a lot of problems with officers falling
11 out, dizziness, nausea. And then when the fumes it, it's even
12 worse. A little joke there, but the idea being, though, that it
13 is a difficult job, and the toxics do complicate things for
14 officers, especially if they're in a gun position where they
15 have to be alert and capable.

16 There's some use of SCUBA, or the self-contained
17 breathing apparatus, that is used to off-set the effect of those
18 fumes. There is the ongoing need for the training of officers
19 in the armed posts with that equipment on to be able to
20 function. So, that is a matter that's been taken up with Warden
21 Mueller.

22 The Chapter, and the Warden, and the CCPOA
23 leadership did meet. I'm happy to say that it was a very good
24 meeting. We've reaffirmed the commitment to close
25 communication, especially on the issue of the toxics.

26 There's been also concerns over perceptions of
27 disparate treatment. Those kinds of things we're going to be
28 talking about, getting those perceptions dealt with.

1 Glenn certainly knows our crowd. We're very
2 comfortable in working with him to deal with the tough issues.

3 Also, as the Chair knows, there's been a lot of
4 good dialogue between the Association and your office on the
5 issue of prison construction. We noted your question on the
6 mega prison to Warden Lindsey. Appreciate that being up there
7 on the list of concerns.

8 We are concerned that, since there has been no
9 new space worked out in terms of negotiations with the
10 administration and legislative leadership, that we worry of the
11 need to upgrade the current Level II facility that Folsom is.
12 If there's a chance that it may go to possible Level III type of
13 a prison, then that obviously would be of great concern to the
14 chapter, and the staffing issues. We know that the Warden would
15 be more than amenable to talking with the chapter and dealing
16 with those concerns.

17 With that, we're pleased to work with Warden
18 Mueller, and we appreciate the Committee taking our input.

19 CHAIRMAN LOCKYER: Thank you, Mr. Thompson.

20 You'll note that it's interesting to see the need
21 statistics change with time. The current projection suggests
22 not a lot of III and IV projected increases, but more I and II
23 in the next several years. So, I hope we can figure out ways to
24 accommodate that work.

25 SENATOR AYALA: One more question about that
26 mysterious illness that has affected officers and inmates in the
27 vicinity of Tower 21.

28 MR. MUELLER: Yes, sir.

1 SENATOR AYALA: It's been documented there is a
2 problem, but nobody seems to know where it's coming from?

3 MR. MUELLER: Nobody's been able to actually
4 identify it positively where it's coming from or what it
5 really is. We've gotten monitors that we've put up there that
6 monitor the different levels. We've changed some of those
7 monitors around. We've put in now a negative -- excuse me, a
8 positive air flow system which we're trying to see if this will
9 help within that tower.

10 We've put monitors on the smoke stacks. We've
11 had people come out and monitor our sewers. I tell you, this is
12 one of those things that's the most difficult thing I've ever
13 done.

14 SENATOR AYALA: Just occurs on Tower 21 and no
15 where else?

16 MR. MUELLER: There's a couple other towers, if
17 the wind is right, can be affected also.

18 You know, in the prison system, we're used to
19 dealing with things that we can get our hands on. This really
20 is something that has been very difficult for me, because I
21 can't get my hands on it. Nobody has been able to. It's
22 frustrating.

23 CHAIRMAN LOCKYER: We have odor problems, too,
24 but mostly at campaign time.

25 [Laughter.]

26 MR. MUELLER: I understand, sir.

27 CHAIRMAN LOCKYER: What's pleasure of the
28 Committee?

1 SENATOR AYALA: Move.

2 CHAIRMAN LOCKYER: We have a motion by Senator
3 Ayala to confirm. Call the roll.

4 SECRETARY WEBB: Senator Ayala.

5 SENATOR AYALA: Aye.

6 SECRETARY WEBB: Ayala Aye. Senator Brulte.

7 SENATOR BRULTE: Aye.

8 SECRETARY WEBB: Brulte Aye. Senator Hughes.
9 Senator Lewis.

10 SENATOR LEWIS: Aye.

11 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

12 CHAIRMAN LOCKYER: Aye.

13 SECRETARY WEBB: Lockyer Aye. Four to zero.

14 CHAIRMAN LOCKYER: Good luck, sir.

15 MR. MUELLER: Thank you very much, sir, and I
16 thank the Committee very much.

17 CHAIRMAN LOCKYER: You can tell who didn't have
18 to drive far.

19 Dr. Newland is our final warden. Good afternoon,
20 sir. Go ahead, if you would, just tell us a little about
21 yourself.

22 DR. NEWLAND: Mr. Chairman, Members, I appreciate
23 your time.

24 As you can see from your notes, I began with the
25 state about 25 years ago in parole in the San Francisco Bay
26 Area. And there really, the emphasis was on communication
27 because that was our only line of safety, our only line of
28 defense with parolees out and in the community. And there I

1 learned a lot about narcotics and substance abuse with a
2 caseload of parolees.

3 At Soledad, I became involved in the basics of
4 security and the classification system. Then up at San Quentin,
5 that was a time of great unrest, so I got to learn the hard way
6 the management of emergencies. And also, as the public
7 information officer, I had more than my share of experience with
8 the press, radio and television.

9 At headquarters, I was involved in compliance
10 with lawsuits statewide. There I learned the benefit of
11 following our own rules and spent a lot of time in court,
12 working with issues of accountability. And integrity and
13 credibility were the most important issues there, so that when I
14 presented something to a judge, he was or she was assured that
15 it was going to happen.

16 At CMF South, my experience was in management,
17 and most importantly, personnel selection, because an
18 institution isn't the warden, it's the whole team of staff that
19 are working together. Over at CMF, I became very much involved
20 in the issues of mental health care and medical care.

21 And after that experience, I went back to the new
22 CSP Solano, where again, I've been working on education,
23 program, industries, and joint venture because we are a
24 programming institution. Simultaneously, I've of course all
25 these years been part-time pursuing my own education, and I
26 think each of these experiences has been a milestone in
27 preparing for today.

28 Thank you.

1 CHAIRMAN LOCKYER: Thank you.

2 Let me ask if there's anyone that wishes to
3 comment. Yes, we're record you again as supportive.

4 Yes, sir.

5 MR. EDWARDS: Senator Lockyer, my name is Dave
6 Edwards. My father, Ron, and my mother, Rita, and I operate the
7 joint venture business in Mr. Newland's prison. We've been
8 manufacturing furniture since 1990, and we've been in Mr.
9 Newland's prison since February of 1994.

10 Today you are considering the confirmation of
11 Mr. Newland as the Warden. And I would like you to consider,
12 too, that since Prop. 139, today's wardens, along with all the
13 other responsibilities that they have, also have the
14 responsibility of having a joint venture in their prison, or
15 they will at some point.

16 I would like for Mr. Newland, and for all the
17 other wardens, and for you on the panel to bear in mind that
18 private companies are not a vocational class or a PIA. They're
19 a for-profit type business. The wardens must understand that,
20 and the wardens must understand or make considerations when
21 they're making decisions and consider that there is a private
22 business whose livelihood rests with the warden's decision.

23 I want to let you know that in the past, we have
24 had some troubles at the prison. A couple weeks ago, Ken Hurdle
25 acted as a mediator and brought Mr. Newland and our company
26 together. And we discussed changes that could be made, and we
27 discussed Mr. Newland's support.

28 And Mr. Newland at that time reaffirmed his

1 support, and has indicated that he would make every effort to
2 make our private business viable and successful.

3 This hasn't happened yet. We only had this
4 meeting a couple weeks ago. I'm hopeful that Mr. Newland will
5 be supportive, as he has indicated in a memo that he sent to us.

6 But I would like to ask you on the panel and
7 others to keep in mind the actual necessity of wardens to reach
8 out and consider private businesses when they're making their
9 decisions.

10 I'm hopeful that Mr. Newland will do that in the
11 future. Mr. Hurdle has indicated that if we do have problems in
12 the future, that I can get back with him, and I would suppose
13 that he would inform whoever it would take to have a look or to
14 have another meeting with this.

15 At this time, I can't --

16 CHAIRMAN LOCKYER: You have about 22 prisoners,
17 roughly, in the program?

18 MR. EDWARDS: Roughly, right.

19 CHAIRMAN LOCKYER: In the joint venture
20 furniture?

21 MR. EDWARDS: Right.

22 At this time, I can't give support to
23 Mr. Newland, but I will reserve it for down the road.

24 CHAIRMAN LOCKYER: Okay, sir. Thank you.

25 MR. EDWARDS: If anybody has any questions, I'd
26 be happy to answer them.

27 CHAIRMAN LOCKYER: If you had to say one problem
28 that seems to reoccur, what would you think it is?

1 MR. EDWARDS: The main problem, the bottom line
2 is getting the inmates to the job site.

3 CHAIRMAN LOCKYER: Getting them there?

4 MR. EDWARDS: Right, having them work 35, 40
5 hours a week. Everything else kind of takes a back seat to
6 that.

7 CHAIRMAN LOCKYER: I could understand why that
8 might be a problem. Those aren't the most motivated people on
9 the planet.

10 DR. NEWLAND: And occasionally, there are
11 disruptions in the institutional operation, as there would be in
12 any institution. And as we are joint venture, the Edwards and I
13 are working together in the spirit of compromise to try to work
14 out these issues.

15 CHAIRMAN LOCKYER: Okay.

16 Thank you, Mr. Edwards.

17 MR. EDWARDS: Thank you.

18 CHAIRMAN LOCKYER: I note in looking at your
19 summation, I guess we could call it, Warden, of inmate work
20 issues, the largest group is the 1600 in support services.
21 Explain what's included in those type jobs.

22 DR. NEWLAND: Support services would include the
23 kitchens, cleaning in the institutions, yards, maintenance, all
24 of the things day-to-day.

25 CHAIRMAN LOCKYER: Library.

26 DR. NEWLAND: Library and even in my office we
27 have inmates doing work.

28 CHAIRMAN LOCKYER: And prison industries, 444.

1 What other kinds of industries are there?

2 DR. NEWLAND: In prison industries, we have a
3 list for you. Those include optical. We make eye wear for
4 state institutions, and also for the Medi-Cal program
5 statewide. We have a precast factory which has been making
6 prisons, but that business has slowed down a bit, as you might
7 understand. We also make metal furniture, and we have a book
8 bindery which makes binderies such as -- binders such as one you
9 have. I believe those were made in the prison industries. And
10 also we make the cloth road signs for Caltrans.

11 CHAIRMAN LOCKYER: The laundry, is that an
12 external industry or is it just for internal use?

13 DR. NEWLAND: Our laundry serves the California
14 Medical Facility and Sonoma State Hospital and ourselves, and on
15 occasion, if another institutional laundry is inoperable, we
16 would take on other institutions such as occasionally the
17 Veterans Home or one of the other state hospitals.

18 CHAIRMAN LOCKYER: What do you regard as hardest
19 part of your job?

20 DR. NEWLAND: Well, right now, my major focus is
21 with the staff on communicating with inmates. That goes back to
22 my time in parole, because especially in a Level II side of the
23 institution, our major mode of security is communication,
24 knowing what's going on with the inmate population.

25 Every employee in the institution is going
26 through a training program right now, including myself -- I went
27 through it -- in crisis communication; how to try to deal with
28 an inmate before a problem evolves into something where we have

1 to actually use force.

2 I regard the first step, a use of force, is
3 actually with the inmate population. And since we have so many
4 new employees, and so much turnover, and so much growth in the
5 Department, those of us who grew up in San Quentin, or Soledad,
6 or in parole, who were used to that kind of interchange with the
7 prisoners are few and far between. So, we're trying to
8 communicate that to the staff.

9 CHAIRMAN LOCKYER: Questions from Members.

10 SENATOR LEWIS: Move confirmation.

11 CHAIRMAN LOCKYER: We have a motion to confirm.

12 Quickly, since you've had these responsibilities
13 as parole agent, new prison coordinator, court management, you
14 did kind of comment on what you learned that you'd teach us for
15 a moment, like in the court system, to be careful about
16 following the law.

17 How about as a parole agent? Anything that you
18 would regard as lessons for policy makers in dealing with the
19 parolees, the system, and how it works? How to have less
20 recidivism. Any thoughts you might want to share?

21 DR. NEWLAND: I believe you brought up what would
22 be the priority. Remember, this is 20-some years when I was a
23 parole agent, but one of the problems remains the same.

24 That is, having some kind of bridge between the
25 institution and parole, as exists with Amity and some of the
26 other drug programs, so that there is a follow-up in the
27 community. In some areas that's called after care, so that
28 there's some continuity of the program out into the community,

1 so we can do whatever we can to prevent the return of these
2 folks to the institution.

3 CHAIRMAN LOCKYER: New prison coordinator, does
4 that mean you were actively involved in bringing new prisons on
5 line?

6 DR. NEWLAND: I was temporarily assigned to the
7 prison at San Diego when that was under construction.

8 CHAIRMAN LOCKYER: So, it's a specific new one
9 that you're bringing in?

10 DR. NEWLAND: Yes.

11 CHAIRMAN LOCKYER: Any lessons from that we ought
12 to know about?

13 DR. NEWLAND: Well, I was assigned to that task,
14 and several court orders came down, and I was redirected back to
15 the court job. So, I didn't spend that much time in that area.

16 CHAIRMAN LOCKYER: And we heard about the court
17 job.

18 DR. NEWLAND: Yes.

19 CHAIRMAN LOCKYER: All right, we have a motion.

20 SENATOR AYALA: The total gross profits for all
21 the CSPs, Solano Prison Industries in fiscal year '95-96, was
22 1.2 million. You project that in '96-97, it will be around 2.6
23 million.

24 First of all, why the increase? And number two,
25 where does that go, General Fund?

26 DR. NEWLAND: The prison industries increase, as
27 you can see from the chart, is primarily in book bindery with
28 some contracts that we have with the Department of

1 Transportation and with the Department of Corrections in
2 producing the new medical file system. And also, we make Motor
3 Vehicle handicap placards. That's really where that increase
4 comes from.

5 I'm not familiar with the handling of the funds
6 in the PIA process. That's an independent entity from the
7 institution.

8 SENATOR AYALA: Does it go back to the General
9 Found, or does it go to match your budget.

10 DR. NEWLAND: It does not go against the
11 institution budget, I'm here to guarantee that, sir.

12 SENATOR AYALA: It must go back to the Governor;
13 right?

14 CHAIRMAN LOCKYER: Director.

15 MR. MADDOCK: Good afternoon, Senator. Tom
16 Maddox, currently Interim Director of the Department of
17 Corrections.

18 The PIA budget would be where those funds go.
19 They manage all the prison industries throughout the prisons,
20 and they have to balance their budget statewide. Some
21 prisons --

22 SENATOR AYALA: Statewide budget.

23 MR. MADDOCK: Right, that was just one prison,
24 one institution's budget, and it has to balance out statewide.

25 SENATOR AYALA: Thank you.

26 CHAIRMAN LOCKYER: Are we ready here? We have a
27 motion before us. Call the roll, if you will.

28 SECRETARY WEBB: Senator Ayala.

1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala Aye. Senator Brulte.

3 SENATOR BRULTE: Aye.

4 SECRETARY WEBB: Brulte Aye. Senator Hughes.

5 Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye. Four to zero.

10 CHAIRMAN LOCKYER: Thank you.

11 DR. NEWLAND: Thank you.

12 [Thereupon. This portion of the

13 Senate Rules Committee hearing was

14 terminated at approximately 3:22 P.M.]

15 --ooOoo--


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of April, 1997.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

MEMBERS ABSENT

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JAMES P. GAZDECKI, Member
Occupational Safety and Health Appeals Board

JOHN A. NICKOLS, Chief
Bureau of Security and Investigative Services

INDEX

Page

Proceedings 1

Governor's Appointees:

JAMES P. GAZDECKI, Member
Occupational Safety and Health Appeals Board 1

Background and Experience 1

Questions by SENATOR AYALA re:

Purpose of Citations and Penalties 5

Decreasing Level of Fines 5

Effectiveness of Current Maximum Penalties
in Reducing Injuries and Illnesses 6

Questions by SENATOR LEWIS re:

Current Backlog of Cases 7

Any Year with Imbalance of Incoming
Cases Versus Those Disposed Of 8

Goal of Disposing of Cases within
Six Months of Entering the Process 9

Longest Average Amount of Time to
Conclude Case 10

Questions by CHAIRMAN LOCKYER re:

Length of Time for Cases to Go through
Process before Recent Reforms 10

Purpose of Pre-hearing Conference 11

Enforcement of Citation in Workplace with
Numerous Employers Present 11

Most Difficult Case 13

Any Problems with Current Laws 13

Motion to Confirm 13

Committee Action 14

1	JOHN A. NICKOLS, Chief	
2	Bureau of Security and Investigative Services	14
3	Background and Experience	14
4	Questions by SENATOR AYALA re:	
5	Number of Licenses Denied Last	
6	Fiscal Year	17
7	Reason for Most Denials	17
8	Number of Disciplinary Actions	
9	Taken in Last Fiscal Year	17
10	Questions by CHAIRMAN LOCKYER re:	
11	Consumer Complaints	18
12	Motion to Confirm	19
13	Committee Action	20
14	Termination of Proceedings	20
15	Certificate of Reporter	21
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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CHAIRMAN LOCKYER: And we'll go to Mr. Gazdecki, I guess, would be the first person to talk to us.

Hi, good afternoon, sir.

MR. GAZDECKI: Good afternoon.

CHAIRMAN LOCKYER: Did you want to start with any kind of comment at all?

MR. GAZDECKI: I have a brief statement.

CHAIRMAN LOCKYER: Please do. That helps.

MR. GAZDECKI: Mr. Chairman and Members, thank you for this opportunity to come before you today so that I can respond to any questions you may have about my service as management member of the Occupational Safety and Health Appeals Board.

The mission of the Appeals Board is to fairly and efficiently decide appeals from citations for alleged violations of the OSHA work place safety and health laws. In addition, the Board strives to provide clear and consistent guidance to the public about those requirements, thereby promoting work place safety and health.

In approaching this important responsibility, I keep two things close in mind. One harkens back to ancient Greece. Many centuries ago in the marketplace of Athens, the philosopher Thucydides was asked by a fellow citizen, "When will justice come to Athens?" And Thucydides replied, "Justice will not come to Athens until those who are not injured are as indignant as those who are."

1 CHAIRMAN LOCKYER: He also said, "Justice is the
2 interest of the stronger," in the Melian Dialogue, but we
3 probably don't want to get off on this.

4 [Laughter.]

5 MR. GAZDECKI: But in any event --

6 CHAIRMAN LOCKYER: That means three votes.

7 [Laughter.]

8 CHAIRMAN LOCKYER: Go ahead.

9 MR. GAZDECKI: The second point I try to keep in
10 mind in going about my job is that it is very important for our
11 board not only to be faithful to the law, and fair and impartial
12 to the parties, but go about what we do so that we inspire the
13 confidence of labor, business, and the public at large. Because
14 without such confidence, it would not be long before the parties
15 were routinely, rather than rarely, seeking redress in the
16 courts.

17 Such a development, in my opinion, would not be
18 beneficial because our courts are over burdened already, and the
19 time and expense to adjudicate these matters would likely go up.

20 Prior to being appointed to this position, I
21 worked in the private sector. I began my career as a lawyer in
22 the Office of the General Counsel at Ford Motor Company and was
23 part of the Environmental and Safety Group.

24 Upon returning to California, I entered private
25 practice, in the course of which I've handled tort, insurance,
26 real estate, environmental, construction, contract, employment,
27 and professional liability matters. I've also taught law school
28 for a number of years as a member of the faculties of the

1 Ventura and Santa Barbara Colleges of Law.

2 Over the past nine months since my appointment as
3 its Chair, our Board has initiated a number of reforms. In
4 January of this year, we wrote to every Member of the
5 Legislature, as well as to key labor leaders and members of
6 industry, to ask for suggestions about improving our operations.
7 We also sent surveys to our customers and posted them on the
8 Internet.

9 We've moved towards a system of vertical case
10 management so that one judge handles a case from when it is
11 docketed through the pre-hearing conference to increase our
12 efficiency. We have taken the scheduling of our hearings off of
13 what was basically automatic pilot, and instead, each month
14 develop a unique strategy to maximize case load reduction.

15 We have provided each of our administrative law
16 judges with laptop computers so they're more efficient in
17 writing their decisions when they're away from the office,
18 hearing matters around the state.

19 Recently, we have put our decisions and those of
20 our judges on the Internet so the public can learn more about
21 work place safety and health.

22 We have reduced the time it takes to review
23 settlements coming before us from what was three to four months,
24 to now, one month or less.

25 And lastly, we are now allowing oral argument on
26 selected petitions before our three-member board. Next week we
27 will receive oral arguments in two matters, which I'm informed
28 this is first time in the history of the board that there will

1 be such oral argument. Now, we're doing that so that this board
2 has a more complete understanding of the issues in those
3 petitions which pose potentially significant public policy
4 implications before we decide.

5 Well, that's a brief overview of the major
6 reforms our board has undertaken since I was appointed as its
7 Chairman. I believe these will prove to be beneficial, and will
8 simply just add to what was already a well run operation.

9 I hope I'll be allowed to continue working in
10 this capacity. I'm committed to the mission and dedicated to
11 being a pro-active, progressive leader in the cause of work
12 place safety and health.

13 In conclusion, I'd like to thank Nancy Michel and
14 her staff for their help, and I'd like to thank all of you for
15 meeting with me. I would appreciate your support by
16 recommending my confirmation to the full Senate.

17 Thank you.

18 CHAIRMAN LOCKYER: Is there anyone present who
19 wishes to comment at all either for our against?

20 We have a number of nice letters, and so on, in
21 support of your appointment, and no opposition that we've heard
22 from.

23 You even have friends that are aggressive enough
24 to talk with a judge that I periodically bump into, and that
25 sort of thing, that says, "Now I'm supposed to tell you about
26 him, good guy; good guy."

27 MR. GAZDECKI: I'm delighted to hear it.

28 CHAIRMAN LOCKYER: Yes, there's a little network

1 happening.

2 Senator Ayala.

3 SENATOR AYALA: We had a nice visit this morning
4 and you covered a lot of territory, but I do have a couple
5 questions.

6 What do you see as the purpose of citations and
7 penalties in the Cal OSHA program? What are the purposes of
8 that?

9 MR. GAZDECKI: I think the over arching purpose
10 must be to ensure that there's work place safety and health,
11 that there is compliance with the law as set forth in the Labor
12 Code and in Title Eight of the regulations. That's the purpose.

13 SENATOR AYALA: We have complaints that the level
14 of fines have been decreasing. Why is that so?

15 MR. GAZDECKI: I don't know whether empirically
16 it's true or not, that the level of fines is decreasing. If I
17 could try and give just a very brief overview of how the penalty
18 system works, it may be helpful to understand why what starts
19 out looking like a very large penalty often doesn't end up that
20 way.

21 Under the system we have here in California, the
22 Division of Occupational Safety and Health is charged with going
23 to the work place, citing what are perceived to be violations,
24 and then, under regulations promulgated by the Director of the
25 Department with a very specific formula, propose a penalty.

26 If the employer does nothing within 15 working
27 days, that will become the assessed penalty. But if the
28 employer challenges that, it comes to our board. And on the way

1 to a hearing, a number of those matters will be settled.
2 They'll be settled because, in some cases, the evidence will not
3 support what was alleged. In some cases, the penalty will
4 decline because while the violation occurred, and everyone
5 agrees that it did, the classification was incorrect.

6 And if you look at the thresholds, if you go, for
7 example, from a willful violation, which is a very, very heinous
8 sort of thing where the penalties could be 70,000, and you drop
9 down to a lower classification, the maximum is 7,000. So, you
10 see, just by the changing of the classification, you can have a
11 very large drop.

12 Another reason why the penalties decline from
13 what their proposed level is to their assessed level is, often
14 there will be multiple citations for really the same hazard.
15 And there're in excess of 3,000 regulations. So, you could have
16 one problem in the work place that you could cite multiple
17 different regulations for.

18 And yet, the regulations provide in Section
19 336(k), it says that where you have multiple citations but it's
20 really the same hazard, where it isn't necessary to bring into
21 compliance, and the employer fully obeys as directed, then it's
22 permissible to reduce some of those penalties.

23 So, there are a number of factors that are
24 responsible for why it starts out sometimes looking like a big
25 number and ends up being a smaller number.

26 SENATOR AYALA: Do you think that the current
27 maximum penalties are effective in reducing the occupational
28 injuries and illnesses?

1 MR. GAZDECKI: I have no reason to believe that
2 they're not. Certainly, the experience of this board prior to
3 my appointment, but of recent vintage, going back a few years,
4 when the Legislature mandated increases in the maximums, and
5 then regulations were promulgated to carry that out -- I believe
6 they went into effect June of 1992 -- well, from June until
7 August, in that period we started to see a doubling of the
8 appeals.

9 So, on the one hand, by raising the level of the
10 maximum appeal, you get people's attention. You also get them
11 coming to the Appeals Board.

12 So, I think they're effective, but it also is
13 going to be something that would be litigated because the stakes
14 have gone up.

15 SENATOR AYALA: Thank you, Mr. Chairman.

16 CHAIRMAN LOCKYER: Thank you.

17 Senator Lewis.

18 SENATOR LEWIS: What is the current backlog,
19 number of backlogged cases?

20 MR. GAZDECKI: Well, right now we have -- I guess
21 one way to answer your question, Senator, is, our goal is to try
22 and be able to adjudicate or resolve a case within six months
23 from its docketing. We're falling short of that in Northern
24 California by a month or two, but we're exceeding it almost a
25 year in Southern California.

26 The exact backlog number I couldn't tell you, but
27 I can tell you that in 1996, for example, we had 4,067 citations
28 docketed. We were able to dispose of 4,022. So, we were almost

1 doing one-to-one.

2 We've made some of these reforms which I
3 mentioned earlier to actually make our judges more productive,
4 help them to do their job. And we've hired a new administrative
5 law judge. And we are projecting that we will see, in '97,
6 about the same number of citations come in, but we believe we'll
7 be able to increase the number disposed of by about 500 to a
8 thousand. So, we're going to be able to cut that backlog.

9 And our goal, by restratigizing every month,
10 instead of just using one rule to tell us how to assign cases,
11 we believe, is going to help us to pare that down so we're back
12 to six months, that target, within a year or so.

13 SENATOR LEWIS: You mentioned 1992, I think it
14 was, as a pivotal year when the level of fines was increased,
15 and the number of appeals went up.

16 In the last few years, has there been any
17 particular year where there was a large imbalance of the number
18 of incoming cases versus those that were disposed of?

19 MR. GAZDECKI: I'd have to refer to some
20 information I have with me. If you'll bear with me, I'll try to
21 answer your question.

22 I have statistics for each of the years with me.
23 They're not all summed in terms of total dispositions. My
24 recollection is that a couple of years ago, when the enforcement
25 activity increased, when there were more inspectors, our work
26 load went up. Similarly, when the hiring stopped and there were
27 cutbacks, the number of appeals coming in declined.

28 For example, in 1996, as I said, we had about

1 4,067 appeals docketed. That was about 700 fewer than the
2 preceding year. And we can only surmise that that may be due to
3 the fact that the division had fewer inspectors or hadn't hired
4 to the level they had previously.

5 I'm told that they've been in the hiring mode,
6 and we've anticipated that in our decision to go forward with
7 hiring an additional administrative law judge. We've placed
8 that judge in southern California, where the biggest backlog
9 is.

10 Is that responsive?

11 SENATOR LEWIS: I think so.

12 You said your goal is to try to dispose of these
13 cases all the way through the process within six months?

14 MR. GAZDECKI: That is our goal. We haven't
15 achieved it, but we think that would be a very laudable standard
16 to meet. We think it is doable.

17 One way we're attempting to get a lot closer to
18 that goal than we have been is to be more aggressive in the
19 scheduling of pre-hearings, where we have found that up to about
20 50 percent of our cases can be successfully disposed of to the
21 satisfaction of the government and the satisfaction of the
22 employers.

23 And so, what I have suggested, with the
24 concurrence of other board members, is that we place a heavier
25 emphasis on that. And we have some performance standards that
26 we've developed in terms of how many pre-hearings we're striving
27 to get through. I believe that number is a minimum now of 350 a
28 month. And I say it's a minimum, but it's an aggressive task

1 for us with our staffing.

2 We've had some analyses done internally that
3 suggests that if we were to do that, within a matter of maybe
4 five to seven months, all things constant, we should be able to
5 get that backlog down where we'd be pretty close to our target.

6 SENATOR LEWIS: Just as a last question, perhaps
7 in the last decade or so, do you know what the longest average
8 amount of time was under the worse circumstances?

9 MR. GAZDECKI: I don't. I can get that for you.
10 I don't have it at the top of my head.

11 CHAIRMAN LOCKYER: I believe you said six months
12 from the term of art, posting or filing?

13 MR. GAZDECKI: We say docketing.

14 CHAIRMAN LOCKYER: Docketing. Now, what's
15 happened before that in terms of the original? How long would
16 it take?

17 MR. GAZDECKI: What would happen is, the statute
18 of limitations for the government to cite an employer is six
19 months from the incident. Assuming they've timely done that,
20 then the employer, upon receipt of the citation, must, within 15
21 working days, file an appeal or, if they're running short, they
22 can pick up the phone or FAX us. That will stop the running of
23 the time.

24 It comes into our office, and from that -- once
25 we are notified of an intent to appeal, and the papers come in,
26 it can take up to two weeks to get the file created and assign
27 it a number. Then what happens is, the parties may, on their
28 own, pursue some settlement discussions. If not, we assign a

1 pre-hearing date. That's conducted telephonically. And, as I
2 said, somewhere around 50 percent of them do get resolved
3 through that process.

4 CHAIRMAN LOCKYER: And the purpose of that
5 hearing is just simply to schedule, to put it on the calendar,
6 the pre-hearing?

7 MR. GAZDECKI: Not really.

8 CHAIRMAN LOCKYER: That's like a settlement
9 conference?

10 MR. GAZDECKI: It's like a settlement conference,
11 or a readiness in settlement for the purpose of not only
12 exploring settlement, but also to identify, if it's going to go
13 on to hearing, can there be a narrowing of the issues,
14 stipulation as to evidence, checking time estimates, and so
15 forth.

16 And also, the same judge who hears the settlement
17 conference is different than the judge who will hear the case,
18 so we try to encourage candor.

19 CHAIRMAN LOCKYER: What happens if you have a
20 work site with numerous employers, maybe it's construction with
21 a general and a lot of subs or something. How do the citations
22 that in that example? Can they cite against an employer that
23 has a sub that's doing something inappropriate, or do you see
24 cases like that?

25 MR. GAZDECKI: Oh, yes. I think there are a
26 couple of things going on in a work place, and it's really much
27 more common than we might think, where there are multiple
28 employers.

1 Every employer is subject potentially to citation
2 if that employer has its employees exposed to conditions that
3 violate the safety orders.

4 Now, in a situation where you have multiple
5 players, let's say one employer was responsible for being the
6 general contractor at a place, and another one was responsible
7 for trenching. And yet a third one maybe had someone installing
8 equipment or a structure.

9 Let's pose that the risk was created in the
10 trench. That operation may have been concluded, and that
11 employer may be physically gone, as may be the general at the
12 time the OSHA inspector comes and sees a problem.

13 If the risk is posed to the employees of the
14 employer who is building something at that time, or working with
15 equipment, that is the employer in California who is subject to
16 citation, not the other ones.

17 The federal OSHA has a different rule. And under
18 the federal rule, all three of them could have been cited.

19 This goes -- the difference goes back to a case
20 in California that came before our board. It was long before my
21 time, but the board at the time decided that the rationale for
22 just citing one employer was that, under California's scheme, if
23 you didn't have employees there, you had no duty. It's only the
24 employer who has employees exposed to the risk who can be cited.

25 Now, that's something that I think has been
26 debated, and my understanding is that the division has drafted a
27 regulation for consideration by the Director that would modify
28 that, but I have not seen the regulation and can't comment on

1 it..

2 CHAIRMAN LOCKYER: Is there any case or policy
3 that comes to mind as the most difficult for you to resolve
4 during this tenure?

5 MR. GAZDECKI: No, I don't think one in
6 particular comes to mind. They all get, I guess, as much
7 attention as I think it needs for me to make a decision with the
8 other board members that we can stand by.

9 CHAIRMAN LOCKYER: Are there times when you think
10 that the law or practice needs to be changed, that there's some
11 unfairness that's a product of applying whatever the current
12 laws might be?

13 MR. GAZDECKI: Nothing particular comes to mine;
14 although I am sure that there have been instances. That is
15 sometimes reflected in either the written opinions of our
16 administrative law judges, or even perhaps in the board's own
17 decisions after reconsideration, where comment will be made:
18 the employer has argued persuasively that, you know, this is a
19 terrible rule, and we're doing the best we can. Our point is,
20 if that's the law, we will enforce that. Your remedy is to go
21 to the Standards Board.

22 So, I think yes, there have been instances, and
23 all we can do at that point is simply say, your remedy lies
24 elsewhere.

25 CHAIRMAN LOCKYER: Are there other questions?

26 SENATOR LEWIS: Move confirmation.

27 CHAIRMAN LOCKYER: We have a motion by Senator
28 Lewis recommending confirmation.

1 Did you want to close? You don't need to.
2 You're doing fine.

3 Call the roll.

4 SECRETARY WEBB: Senator Ayala.

5 SENATOR AYALA: Aye.

6 SECRETARY WEBB: Ayala Aye. Senator Brulte.

7 SENATOR BRULTE: Aye.

8 SECRETARY WEBB: Brulte Aye. Senator Hughes.
9 Senator Lewis.

10 SENATOR LEWIS: Aye.

11 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

12 CHAIRMAN LOCKYER: Aye.

13 SECRETARY WEBB: Lockyer Aye. Four to zero.

14 CHAIRMAN LOCKYER: Good luck, sir.

15 MR. GAZDECKI: Thank you very much.

16 CHAIRMAN LOCKYER: We appreciate your service.

17 MR. GAZDECKI: Thank you.

18 CHAIRMAN LOCKYER: Okay, Mr. Nickols, I guess, is
19 our other one for today.

20 Hi, how are you today?

21 MR. NICKOLS: Very well, sir.

22 CHAIRMAN LOCKYER: It looks like you have a
23 statement to start with, and that'd be fine.

24 MR. NICKOLS: Yes, sir. Thank you.

25 Good afternoon, Mr. Chairman and Members of the
26 Committee. My name is John A. Nickols, N-i-c-k-o-l-s. Thank
27 you for your time and this opportunity to meet with you.

28 It's been an honor to serve these past eight

1 months as Chief of the Bureau of Security and Investigative
2 Services.

3 After many years in the private sector, it is
4 both challenging and humbling to take a turn at public service.
5 The Bureau of Security and Investigative Services, or BSIS,
6 licenses more than 250,000 California individuals and businesses
7 in seven distinct industries. They are the private patrol
8 operators, security guards, private investigators, alarm
9 companies, security training industry, locksmiths, and
10 repossessors. We also provide the guard and alarm industry
11 permits to carry fire arms.

12 My work with the Los Angeles County Sheriff's
13 Department spanned almost 20 years. During this period, I
14 worked in almost all fields of law enforcement. I was a
15 detective for 14 of those years.

16 In 1983, I was hired by the Los Angeles Times as
17 manager of security and served for 13 years as the Director of
18 Security for the Times and the Times Mirror Company. The Times
19 security programs closely paralleled the private patrol operator
20 business that BSIS regulates.

21 During this period at the Times, I was
22 responsible for the installation of intrusion alarms in both
23 residential and commercial buildings owned by the Times Mirror
24 Company. I also designed a security and access control system
25 for the Denver Post and the Baltimore Sun newspapers.

26 During this period with the Times, I was also
27 actively involved in community security programs, working with
28 law enforcement and the commercial security industry.

1 I have achieved several successes since joining
2 the Department of Consumer Affairs and have opened a meaningful
3 dialogue with the regulated industries to increase consumer
4 awareness and to reduce consumer complaints. The Bureau has
5 eliminated its backlogs in licensing.

6 My priority is to focus on consumer protection by
7 fostering a public and private cooperative effort with the
8 industry actually involved in self-policing in the reporting of
9 unlicensed activity. Unlicensed activity endangers the consumer
10 who deals with a vendor whose employees have not undergone
11 proper training or criminal background checks.

12 As our law enforcement resources have been
13 stretched, the public has come to rely increasingly on the
14 private security industry for many services historically
15 provided by peace officers. This is a growing business.
16 Ironically, the industry attracts a disproportionate number of
17 individuals with criminal histories.

18 The Bureau's most important function is the
19 background checks it performs, 16,000 each month. This is a
20 critical factor in ensuring Californians access to reliable and
21 safe security services.

22 I'm pleased to have this opportunity to improve
23 that protection for our citizens. Thank you for your time, your
24 attention, and I'd be pleased to answer any questions you may
25 have.

26 CHAIRMAN LOCKYER: Are there questions? Senator
27 Ayala.

28 SENATOR AYALA: Mr. Nickols, how many licenses or

1 registrations did the Bureau deny last fiscal year to persons
2 who were seeking a license or registration as private
3 investigators or private security guards? Do you have any idea
4 how many of those you denied?

5 MR. NICKOLS: We generally lose about seven
6 percent. They get rejected because of a criminal background
7 problem. That also includes spousal abuse, especially if
8 they're going to try and hold a guard card with a gun permit.
9 We turn them down if they have spousal or domestic abuse in
10 their backgrounds.

11 SENATOR AYALA: That was my next question, what
12 grounds are applicants denied a license? You just answered
13 that, because of criminal activity in the past, or records that
14 are not what they ought to be for a person doing that kind of
15 work.

16 Are those most of the denials, for that reason?

17 MR. NICKOLS: The denials for a security guard
18 and primarily for security officers, it's a criminal background
19 of one sort or another. There's a lot of things that can kick
20 them out of the park: theft, misbehavior like that, assaults,
21 and again, domestic abuse. Domestic abuse is a big one in
22 California, which has now gone nation wide.

23 SENATOR AYALA: Is that an increase or decrease
24 of denials from the year before?

25 MR. NICKOLS: It would be an increase.

26 SENATOR AYALA: How many disciplinary actions
27 were taken such, as license revocations, that the Bureau has
28 taken in the last fiscal year? Does this reflect any trend, the

1 types of discipline actions you've taken?

2 MR. NICKOLS: The background on that is that we
3 have two disciplinary review boards. One is for the security
4 officers and the PPOs, and then we have another group of what
5 they call DRC, with the alarm industry.

6 The figures are just about static from one year
7 to the next. We have more issues involving discipline with the
8 security guards than we do with the alarm industry or the
9 private patrol operators.

10 SENATOR AYALA: You said roughly about seven
11 percent. Is that pretty --

12 MR. NICKOLS: That's about -- that's pretty close
13 to being on target, Senator.

14 SENATOR AYALA: Thank you.

15 MR. NICKOLS: Thank you, Senator.

16 CHAIRMAN LOCKYER: Are there other questions from
17 Members?

18 What kind of complaint history is there? That
19 is, not where you deny a new application, but you hear from some
20 consumer or business? Are there many complaints of that sort
21 that come in?

22 MR. NICKOLS: We do get consumer complaints on
23 all seven industries, and the security officers lead the pack
24 because they're always getting themselves into some type of
25 mischief.

26 The alarm groups generally has to do with over
27 selling a contract, or the consumer doesn't realize what they've
28 bought into. But the security guards, because of nature of what

1 they do, they're right up there with the --

2 CHAIRMAN LOCKYER: So, there's some argument or
3 whatever.

4 MR. NICKOLS: They get into trouble more often.

5 CHAIRMAN LOCKYER: Can you quantify those
6 complaints against security guards? How regularly do you get
7 one of those?

8 MR. NICKOLS: I would say there's several hundred
9 a year. There's quite a few, but it's not as many as you would
10 think.

11 Most of them are resolved through mediation.
12 Some of them are resolved by field investigations, and some of
13 them are resolved by them losing their licenses lenses.

14 CHAIRMAN LOCKYER: Let me ask one more time,
15 other questions, anyone that wishes to comment either for or
16 against?

17 We have no opposition that's been filed.

18 Senator Brulte moves confirmation.

19 If you'll call the roll.

20 SECRETARY WEBB: Senator Ayala.

21 SENATOR AYALA: Aye.

22 SECRETARY WEBB: Ayala Aye. Senator Brulte.

23 SENATOR BRULTE: Aye.

24 SECRETARY WEBB: Brulte Aye. Senator Hughes.

25 Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

28 CHAIRMAN LOCKYER: Aye.

1 SECRETARY WEBB: Lockyer Aye. Four to zero.

2 CHAIRMAN LOCKYER: Thank you very much, Mr.
3 Nickols. Good luck to you.

4 MR. NICKOLS: Thank you, Senator. I appreciate
5 your time, all of you.

6 CHAIRMAN LOCKYER: We appreciate your service.

7 [Thereupon. This portion of the
8 Senate Rules Committee hearing was
9 terminated at approximately 2:55 P.M.]

10 --ooOoo--


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of April, 1997.


EVELYN J. MIZAK
Shorthand Reporter

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MONDAY, APRIL 21, 1997
1:56 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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9 STATE CAPITOL

10 ROOM 113

11 SACRAMENTO, CALIFORNIA

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15 MONDAY, APRIL 21, 1997

16 1:56 P.M.

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25 Reported by

26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SYED P. ALAM, Member
Industrial Welfare Commission

ROBYN A. BLACK, Member
Industrial Welfare Commission

JEFFREY A. MITCHELL, Attorney
Private Counsel for MR. ALAM

WILLIE WASHINGTON
California Manufacturers Association

JULIANNE BROYLES
California Chamber of Commerce

ROY GABRIEL
California Farm Bureau Federation

TOM RANKIN
California Labor Federation, AFL-CIO

PAUL MUHAN
California Trucking Association

SHANNON SUTHERLAND
California Nurses Association

WILLIE L. PELOTE
AFSCME and UNAC

AARON READ
Professional Engineers in California Government

1 WARD ALLEN
2 Teamsters 228 and 952

3 FRANCISCO J. ALARCON, Director
4 Youth Authority

5 FRANK SEARCY
6 Chicano Correctional Workers Association

7 TERRENCE STARR
8 Chief Probation Officer
9 Contra Costa County

10 ALAN CLARKE
11 Chief Probation Officers Association

12 LOIS WOLK, Mayor
13 City of Davis

14 DARLENE JONES-LONGMIRE, Chairperson
15 Association of Black Correctional Workers

16 BILL KOLENDER, Sheriff
17 County of San Diego

18 REGIS LANE, Executive Director
19 Minorities in Law Enforcement

20 EMILY KATZ, Vice President
21 California Emergency Foodlink

22 JEFF THOMPSON
23 California Correctional Peace Officers Association

24 ROBERT CEBALLOS, Past President
25 Mexican-American Correctional Association

26 CRAIG BROWN, Director
27 Department of Finance

28 JIM WARE
CDC Hot Team

SILAS MARIANO, Business Administrator
Youth Training School
California Youth Authority

ASSEMBLYWOMAN HELEN THOMSON

LENNY GOLDBERG, Lobbyist

INDEXPage

Proceedings 1

Governor's Appointees:

Taken Together:

SYED ALAM, Member
Industrial Welfare Commission 1

Background and Experience 2

ROBYN A. BLACK, Member
Industrial Welfare Commission 1

Background and Experience 3

Questions by CHAIRMAN LOCKYER to MS. BLACK re:

Receipt of Letters and Testimony from
Those with Labor Perspective 6

Hours of Hearing on Over-time Issue 7

Questions by SENATOR HUGHES to MS. BLACK re:

Letter of Recognition or Resignation 10

Questions by SENATOR LEWIS to MS. BLACK re:

Number of People Affected 10

Definition of People Affected by
Over-time Decision 11

How Many of Those Affected Did not Receive
Over-time Last Year 12

Reaction of Restaurant Employees 13

Questions by CHAIRMAN LOCKYER to MS. BLACK re:

Wage Orders Covering Restaurant Employees 15

Statements by CHAIRMAN LOCKYER re:

Information from CEOs Applying for Exemption
under Current Law 15

Questions by SENATOR AYALA to MS. BLACK re:

Interpretation of IWC's Mission 16

Response by MR. ALAM 17

Questions by SENATOR AYALA to MR. ALAM re:

Representative of Organized Labor on IWC 18

Questions by CHAIRMAN LOCKYER to MS. BLACK re:

Orders Affecting Waiters 21

Questions by SENATOR BRULTE to MS. BLACK re:

Areas of Employment not Covered by
8-hour Day Rule 21

Coverage of Farmworkers 22

Responses by MR. ALAM:

Mining Industry Is Exempt 23

Percentage of California Workforce
Impacted by New Wage Orders 24

Union Workers not Impacted 26

Questions by CHAIRMAN LOCKYER to MS. BLACK re:

Number of Letters from Workers 27

Sufficient Commentary in Public Record
to Justify Votes 29

Impact on Worker Safety 30

Questions by SENATOR BRULTE to MS. BLACK re:

California's Definition of Injury 31

Any Attempts by 47 Other States to Conform
to California's 8-hour Over-time Rule 31

Questions by SENATOR AYALA to MS. BLACK re:

Conditions of Farmworkers 33

Questions by CHAIRMAN LOCKYER to MS. BLACK re:

Types of Crops Grown on Family Farm 34

Commission's Refusal to Endorse Knox
and Solis Bills 35

Response by MR. ALAM 36

Questions by SENATOR BRULTE to MS. BLACK re:

Adoption of Resolutions to Recommend
Bills to Legislature 36

Witnesses in Support:

WILLIE WASHINGTON
California Manufacturers Association 37

JULIANNE BROYLES
California Chamber of Commerce 40

ROY GABRIEL
California Farm Bureau Federation 42

PAUL MAHAN
California Trucking Association 48

Questions by CHAIRMAN LOCKYER re:

Number of Trucking Employeed
Affected in California 48

Basic Rules that Apply to
Truckers 49

Witnesses in Opposition:

TOM RANKIN
California Labor Federation, AFL-CIO 42

SHANNON SUTHERLAND
California Nurses Association 49

WILLIE PELOTE
American Federation of State, County and
Municipal Employees (AFSCME) 50

AARON READ
Professional Engineers in California Government 50

Questions by SENATOR AYALA re:

Why Must Labor Representative
on IWC be Union Member 51

WARD ALLEN
Teamsters 228 and 952 52

Questions by SENATOR HUGHES to MS. BLACK re:

Family Involved in Agriculture	53
Right of People to Work Over-time and Receive Over-time Wages	54
Votes on Agricultural Issues	55
Motion on Voluntary Over-time	60
Motion on Child Care Expenses	61

Questions by SENATOR BRULTE to MS. BLACK re:

Date of Next Public Meeting of IWC	64
--	----

Questions by SENATOR HUGHES to MR. ALAM re:

Position on Motions for Voluntary Over-time and Child Care	66
Position on Knox and Solis Legislation	69
Response by MS. BLACK	73

Questions by SENATOR LEWIS to MS. BLACK re:

Home Phone Number Published	74
Opportunity to Put Anything Else on Record	76

Questions by CHAIRMAN LOCKYER to MS. BLACK re:

Problems with Flex Time under Current Law	80
Need to Change Regulation to Allow Flex Time, not Law	81

Rebuttal of MR. RANKIN by MR. ALAM

Statements by CHAIRMAN LOCKYER re:

Injury Statistics	85
Intention to Vote No on Confirmations	85
Commission Exceeded Statutory Authority	86
Lack of Support for Knox and Solis Bills	87
Labor Representative Slot	87

Motion to Send Nomination of MS. BLACK to
Senate Floor with Recommendation Not to Confirm

1	Committee Action	88
2	Motion to Send Nomination of MR. ALAM to	
3	Senate Floor with Recommendation Not to Confirm	89
4	Committee Action	89
5	FRANCISCO J. ALARCON, Director	
6	California Youth Authority	89
7	<u>Witnesses in Support:</u>	
8	FRANK R. SEARCY, President	
9	Chicano Correctional Workers Association	89
10	TERRENCE STARR, Chief Probation Officer	
11	Contra Costa County	90
12	ALAN CLARKE	
13	Chief Probation Officers Association	91
14	HONORABLE LOIS WOLK, Mayor	
15	City of Davis	91
16	DARLENE JONES-LONGMIRE, Chairperson	
17	Association for Black Correctional Workers	
18	Sacramento Area	92
19	BILL KOLENDER, Sheriff	
20	San Diego County	92
21	REGIS LANE, Executive Director	
22	Minorities in Law Enforcement	94
23	EMILY KATZ	
24	California Emergency Foodlink	95
25	JEFF THOMPSON	
26	California Correctional Peace Officers Association ...	96
27	ROBERT CEBALLOS, Past President	
28	Mexican-American Correctional Association	97
	CRAIG BROWN, Director	
	Department of Finance	97
	JIM WARE	
	CDC Hot Team	98
	WARD ALLEN	
	Teamsters	99

Witness in Opposition:

SILAS MARIANO, Business Administrator
Heman J. Stark Youth Training School, Chino
Youth Authority 100

Questions by SENATOR AYALA re:

Appointment of All Superintendents
by ALARCON 109

Problems at YTS Occurred under
Many Superintendents 110

Tenure of MR. VANDER WEIDE 111

Some Problems at YTS Caused by
Negotiations with CCPOA 112

Questions by SENATOR BRULTE re:

Definition of M Cases 113

Youth Authority Institutions
with M Cases 114

Current Status of M Cases 115

Prior to M Cases being Transferred
to CDC, Lock-down Status at YTS 115

The Key Process for Keeping
Track of Employees 115

Current Policy with Respect to
Keys and Tracking Employees 117

Personnel File with Respect to
Ratings 117

Position at YTS 118

Background at Youth Authority 118

Hiring of Lieutenants 119

Only Person Speaking in Opposition 120

Witnesses in Support:

ASSEMBLYWOMAN HELEN THOMSON 122

LENNY GOLDBERG, Lobbyist 123

Statements by CHAIRMAN LOCKYER that Confirmation
of ALARCON Will Resume on May 5 124

Termination of Proceedings 125

Certificate of Reporter 126

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: We're going to start today with gubernatorial appointees, because there are people who are waiting to be heard on those matters. We have two members of the Industrial Welfare Commission and the Director of the Youth Authority for consideration.

So, staff may have assumed one thing, and I'm planning to do another, which is to hear the two IWC appointees, that discussion first, and then subsequently Mr. Alarcon.

So, if there are people who want to try to schedule that have an interest in one or the other, that's the order of things. Then we'll go back to legislation and the other topics.

So, we'll just take a moment or two to give an opportunity for Mr. Brulte to join us.

I think the Governor's staff indicated that we could interview both appointees at once. It's up to them if they prefer to be in any order.

Good afternoon. Nice to have you with us. What we normally start with is, a person is asked if they want to make some brief introductory comment, just a general comment, and then have other testimony and questions.

I saw you on television last night on one of these issues that you are so involved in. You did your part quite well.

Should we do this alphabetically?

MS. BLACK: It's great with me since I'm second.

1 CHAIRMAN LOCKYER: I guess that means Alam is
2 first.

3 MR. ALAM: Good afternoon, Mr. Chairman and
4 Senators. My name is Syed Alam, S-y-e-d, first name, and I am
5 a graduate from Sac. State. I did my Master's in 1986, and I
6 have experience of over 22 years in the construction and in the
7 litigation field. Right now I'm working with the Department of
8 Corrections as Associate Mechanical Engineer, rank and file
9 worker.

10 I accepted the position of IWC Commissioner in
11 May of 1996. I attended my first meeting on May 17, 1996. I
12 abstained from all the votes on my first day.

13 At that time, the Commission had held hearings on
14 over-time and voted on May 17th to select the wage boards for
15 the wages orders one, four, five, seven, and nine.

16 At present, I know the pressing issue is that of
17 over-time, and it's like a sword over my confirmation. I joined
18 the Commission with an open mind and desire to serve not one
19 group, but all the people of California who deserve nothing but
20 the best.

21 As an engineer, I believe in factual evidence and
22 conduct a full investigation before making a final decision. I
23 studied all the pertinent records regarding over-time, all the
24 testimony and the expressly opposed, and then I reached a
25 conclusion that I'm sure that the labor is not happy with that.
26 But I did my homework. I think that is how I take every
27 problem, very seriously, every issue very seriously. I try to
28 do my best, and try to make the best decision that I could.

1 I call myself a true laborer because I use my
2 brain and hands to prepare projects which are constructive in
3 nature. I could never think to destroy anyone.

4 What can I say, that I'm fully aware of the labor
5 issues handled by advocacy, and have great compassion for the
6 labor. I strongly support increase in minimum wage, and will
7 vote for increase it whenever it comes for voting.

8 Regarding over-time, we've got testimony in the
9 records that others have presented to convince me that the
10 eight-hour day is the only way to go. Believe me, that I will
11 be first one to work for it.

12 It was an honor to serve on the Commission, and
13 it's my pleasure to be here today. Thank you.

14 CHAIRMAN LOCKYER: Thank you, sir.

15 I guess maybe an opening comment would be the
16 right way to do this. I'm not quite sure when there's two at
17 once.

18 MS. BLACK: Thank you, Mr. Chairman, Members. My
19 name is Robyn Black. I have been the Chairperson of the
20 Industrial Welfare Commission for two years. I was originally
21 appointed in 1994 and confirmed by this body -- not to be
22 repeated, I'm sure, today -- but once by unanimous vote.

23 I stand before you again today very proud of the
24 work that I've done on the Commission for last three years. I
25 have -- when I originally was asked if I'd be interested in
26 serving on the Commission, I had no idea three years ago --

27 CHAIRMAN LOCKYER: How much fun it would be.

28 MS. BLACK: How much fun it would be, absolutely.

1 Over the last three years, this particular issue
2 has been a huge challenge. I promised the Members of this
3 Rules Committee two years ago, when I sat before you for
4 confirmation, that I would be fair, and that I would come to
5 this position with no immovable positions, that I would learn
6 the issue, and learn it as well as I could from both
7 perspectives, not just the perspective of the employer's seat,
8 for which I represent.

9 I understand the mandate of the Industrial
10 Welfare Commission. I understand it is to protect the health
11 and welfare of employees.

12 But it further goes on to state that it should be
13 done without causing undue hardship to employment opportunities
14 in the state.

15 What I've experienced over the last few months
16 has been phenomenal. I think it's been beyond description to
17 somebody who's not been through this.

18 For the last four months, as we've tried to
19 address this issue, I have continually asked members of labor to
20 help me understand, to sit down and talk with me on the issue,
21 to work with me for a better policy and a policy that provides a
22 solution that maybe all sides can support.

23 I have never been contacted, with the exception
24 of Assemblyman Wally Knox, and running into individuals in the
25 hallway and having brief conversations with them, I have never
26 been contacted by anyone to really try to work on some kind of
27 equitable solution.

28 What I have been is threatened. I've been

1 threatened at home. My home phone number has been published.
2 My twelve-year-old son, who sits and works at the computer in my
3 office, has had to listen to the threatening phone calls on my
4 answering machine. I have had threats at hearings. I have had
5 obscenities yelled at me that would embarrass a sailor.

6 And to this date, nobody has still yet sat down
7 and tried to talk to me about the policy and the policy
8 challenge that not only the IWC has tried to deal with, but this
9 Legislature has tried to deal with for many years.

10 And ultimately, on Friday, April 11th, at the end
11 of that board meeting, a man confronted this Commission with a
12 loaded .38. He is now in jail for attempted murder.

13 Ironically, what that man said to me just before
14 he pulled that gun was that he didn't even think this over-time
15 issue was going to hurt anybody. He didn't think that it going
16 to have impacts on anybody because he perceived that employers
17 in California were not scheduling over-time anyway; how we set
18 the hours didn't matter to him. He was truly angry at
19 government.

20 CHAIRMAN LOCKYER: We've all had this, and I
21 think it's an almost universal experience those of us in public
22 office, though it's horrible to hear when it happens to
23 volunteers like yourself.

24 MS. BLACK: I appreciate that.

25 Again, as I stand, and I won't take a lot of time
26 with opening comments because I'm guessing that you might have
27 some questions for us today, but what I promised this body two
28 years ago is that I would be fair.

1 And I would offer to you, as I stand before you
2 again today, that I still believe that I have been more than
3 fair. I have listened to all of the public testimony. I have
4 read every letter. I have stayed hours after these hearings
5 were scheduled so that everyone that came to speak could be
6 heard.

7 CHAIRMAN LOCKYER: Ms. Black, would you try to
8 help me understand.

9 You started by saying you've been open to hearing
10 from people who are on the other side of the issue, and that
11 hasn't occurred. But you just mentioned that you've read the
12 letters and heard the testimony.

13 Weren't some of those people that you were
14 listening to of a different point of view? That is, the
15 whatever you might call it here, the labor perspective?

16 MS. BLACK: I would say that yes, they were
17 individuals who both supported and opposed the proposal.

18 CHAIRMAN LOCKYER: So, you've heard a lot of
19 comment from people on both sides of the issue, is my point.

20 MS. BLACK: I've been involved in this issue for
21 18 months, Mr. Chairman.

22 CHAIRMAN LOCKYER: I just didn't understand your
23 opening comment that you wanted someone from labor to work with
24 you, but you've never heard from them.

25 MS. BLACK: No, from those who oppose the plan or
26 the proposal, or opposed the change, I would say from my
27 experience that the most vocal opponents have been members who
28 represent labor in some form or another, or who belong to a

1 labor union. By and large, that has been the greatest voice of
2 opposition.

3 So, I've asked those groups, and the leaders of
4 those groups, to take the time to sit down and talk with me
5 about the policy.

6 And I would ask you to please ask the members as
7 they speak against my confirmation today if in fact they knew
8 that I wanted to meet with them to talk about the policy, and if
9 they ever acted.

10 CHAIRMAN LOCKYER: You just said you've gotten
11 lots of letters, and you stayed after and talked to anyone, and
12 heard all the testimony.

13 I don't know how many hours, but weren't there a
14 lot of hours of hearings?

15 MS. BLACK: Yes.

16 CHAIRMAN LOCKYER: How many do you think, hours?

17 MR. BLACK: Just on the preliminary hearings,
18 there were five investigatory hearings. On the hearings on the
19 proposal, there were three additional hearings and two public
20 meetings at which time I allowed public comment as well.

21 CHAIRMAN LOCKYER: So, how many hours do you
22 think that comprises in total, just in public session?

23 MS. BLACK: They were, what, six hours, most of
24 the hearings, so I would say 20, 22 hours total.

25 CHAIRMAN LOCKYER: Just the public hearings.

26 MS. BLACK: On public hearings on the proposal,
27 that was in the three hearings. And then, the investigatory
28 hearings that were also held, as I said, there were five of

1 those.

2 CHAIRMAN LOCKYER: Plus staying after and the
3 mail. It sounds like you devoted a few hundred hours to
4 thinking about this issue and talking people?

5 MS. BLACK: At minimum a few hundred hours. As I
6 said, Mr. Chairman, I read every letter. I read the reports. I
7 read the studies. I sought out information on my own.

8 I tried to bring every effort of due diligence to
9 this issue because I took the issue very, very seriously. I
10 knew that our decision would impact potentially 8 to 9 million
11 people. That's not a decision that you take lightly.

12 And in closing, I'll try to wrap this up as
13 briefly as I can, as I said, I promised this body two years ago
14 I would be open minded.

15 I would also suggest to you, Senator Lockyer,
16 that in January, one of the other proposals was the proposal
17 that had to do with the definition of primarily. That pertains
18 to how, under California law, we define whether an employee's
19 exempt or not exempt from over-time pay.

20 The proposal, and a proposal that I moved, would
21 have brought California into compliance with the federal
22 standards, and potentially, some say that, yes, it's easier in
23 terms of conformity. Yes, there were some benefits for
24 employees who might be titled manager in their resume, and their
25 stature might go up, greater job opportunities following that
26 particular job. And also being able to bring some kind of
27 cohesiveness to a work group, which is what we're seeing many
28 times in the private sector.

1 That proposal to change the definition of
2 primarily I saw has having great impact. I had several
3 conversations with emblyman Wally Knox, and Assemblyman Knox
4 explained to me the downside of that proposal, the potential
5 that employees could be abused under that, given a new title and
6 not allowed to earn over-time.

7 I voted at the April 11th hearing to reject my
8 own proposal.

9 I would submit to you in closing that I
10 understood my mandate. I believe I followed it with all due
11 diligence possible. I had an open mind. I listened to people,
12 and I changed my mind when the arguments were such that I agreed
13 with what they had to say.

14 I think it's a shame that I didn't have the same
15 opportunity to talk further with members of labor in a
16 nonhostile environment of a hearing, but to really sit down and
17 talk about the issue.

18 I would tell you that I had promised my family
19 after last Friday's hearing that that would be my last day on
20 the roll of the Commission. It's not worth it. It's not worth
21 explaining to your twelve-year-old child why somebody pulled a
22 gun on his mother.

23 I didn't want to come to this body today. I
24 thought I would just send a simple letter of recognition [sic],
25 given all that I had been through, but I couldn't do it, because
26 I believe in what I did. I believe I did my job to the best of
27 my ability, and I believe I -- with all my heart and soul, that
28 the decision that I ultimately decided was in the best interests

1 of the 8 million employees in California who have continued to
2 ask for this kind of flexibility in their work schedule.

3 So, I'm proud to answer any of your questions. I
4 thank you for your time, and it's a pleasure to be before you
5 again.

6 SENATOR HUGHES: Senator Lockyer.

7 What was the letter? You said you thought you'd
8 send in a letter of recognition?

9 CHAIRMAN LOCKYER: Resignation.

10 SENATOR HUGHES: Resignation, is that what you
11 meant to say.

12 MS. BLACK: Yes.

13 CHAIRMAN LOCKYER: I assume some urged you not to
14 do that?

15 MS. BLACK: No, it's a decision I came to on my
16 own.

17 CHAIRMAN LOCKYER: No one urged you not to do
18 that?

19 MS. BLACK: No, it's a decision I came to on my
20 own.

21 CHAIRMAN LOCKYER: I think there are people that
22 want to testify. Do you want to ask some questions first or
23 hear testimony?

24 SENATOR LEWIS: Question.

25 You used the figure of 9 million people could
26 potentially be affected. I believe that was the figure, 8 or 9
27 million.

28 MS. BLACK: It's approximately, from what I

1 understand, eight and a half million.

2 SENATOR LEWIS: In a pool of employees, what is
3 the exact definition of that pool of employees? Those are
4 people that don't have labor contracts?

5 MS. BLACK: That's the number of people that are
6 covered by the Industrial Welfare Commission's orders,
7 approximately. There are 15 industry orders and -- industry and
8 occupation orders. Those are the individuals who are exempt --
9 excuse me, nonexempt employees. They're not managers; they're
10 hourly employees.

11 This decision also did not affect members of
12 labor unions, public sector employees, and so there's a certain
13 number that needs to be excluded out of that.

14 Again, when I looked at this, you're charged
15 often by labor as not representing the opinions of labor to
16 protect employees. But there are 85 percent of that 8 to 9
17 million member workforce that don't have the ability to have
18 this flexibility in scheduling, that those who work under a
19 collective bargaining agreement, or those who work for the
20 public sector have.

21 So, I believe we did our job in looking at those
22 who did not have this through a collective bargaining agreement
23 or through their employment, but yet would like to have had this
24 change.

25 SENATOR LEWIS: Part of the crux of the debates
26 centers on the fact that there are some employers, for an
27 example, some employers that work in an industry where they have
28 a very thin margin of profit, that, under current law, there's

1 disincentive for paying over-time.

2 I'm just curious, do you have statistics out of
3 that pool of eight and a half or nine million people, how many
4 did not receive any over-time during the last year?

5 MR. ALAM: I can answer to this.

6 I think there are 8.1 million covered workers who
7 are members of the unions, and only 10 percent of them get
8 over-time.

9 SENATOR LEWIS: I'm sorry, only what?

10 MR. ALAM: Only 10 percent of those workers get
11 over-time. That's the statistics from the pool that was
12 produced.

13 MS. BLACK: Senator Lewis, there were several
14 studies what were submitted to the Commission. Some of them
15 were independent. Some of them were conducted by businesses.
16 But specifically, there were two studies submitted to the
17 Commission, one by Professor McCarthy, and one that's also
18 referred to as the Trejo study.

19 Both of those two particular studies looked at
20 the effects of the over-time rule as applied to men in 1980.
21 And both of the studies concluded there was a significant loss
22 in over-time hours earned because of the restrictive rigidity of
23 the eight-hour rule.

24 We also looked to other states and information
25 from the 47 other states that have the forty-hour work week, and
26 there was nothing there to suggest that California employees
27 were earning more over-time. There was nothing to suggest that
28 there was greater incident of accidents and injury. In fact,

1 California is higher. And there was nothing to indicate that it
2 would have implications on unemployment.

3 I looked at both studies, and although some
4 people have drawn a conclusion from the Trejo study -- this \$1
5 billion, or \$833 million -- that is, in fact not in the Trejo
6 study. That's a conclusion that others reached after reading
7 his report.

8 In fact, Mr. Trejo spoke to the Commission at the
9 final hearing in Los Angeles and concluded with the fact that he
10 didn't see the potential for great loss. He didn't think it was
11 going to have that big of a difference on over-time hours worked
12 because employers avoid paying a 50 percent penalty on labor
13 costs, regardless of how it's scheduled.

14 So, there was a great deal of effort that we
15 looked at, because that was certainly one of my concerns. You
16 don't protect the health and welfare of employees by giving them
17 a pay cut.

18 I would submit to you that the information
19 submitted by recognized economists, an economist that this body
20 is using, Dr. McCarthy, this body is using for their research on
21 welfare. This is a credible body that said that there will not
22 be and in fact could be an increase earning of over-time if we
23 were to get rid of this rigid rule.

24 SENATOR LEWIS: I had lunch at a restaurant in
25 Orange County on Friday. The owner of the restaurant came over
26 to me and told me the majority of his waiters at that particular
27 restaurant in fact worked at an additional restaurant because
28 they could not afford to pay over-time there. Yet, they would

1 gladly stay at work at that one particular restaurant, but they
2 go drive across town to work at a second restaurant.

3 Are those the kinds of stories you hear quite
4 commonly?

5 MS. BLACK: As I said, Senator, I read every
6 letter. I tried to research everything.

7 When I go out to dinner, I drive my family crazy
8 because I start asking people in the restaurant. I don't tell
9 them why I'm asking. They just think I'm some nut that wants to
10 know about, you know, if they like their hours and their
11 conditions of employment.

12 But yes, that was offered to us many, many times,
13 specifically by employees and part-time employees in the
14 restaurant industry.

15 Lots of times they'd be students, or they'd be
16 working a second job, so their work week was a compressed work
17 week. And they found after eight hours, that they only had two
18 days to work. Their employer sent them home. Where, if we
19 waived this particular law, they could stay, and they could not
20 only earn the additional hours from the employer, but in fact,
21 they also made a great deal of their money in tips. So, if they
22 were allowed to remain on the job for an extra couple hours, it
23 wasn't just the hourly rate, but it was in fact tips.

24 So, we sought out that information, I think. And
25 again, I stand by the fact that all studies suggest that there
26 really is not going to be any significant loss and potentially
27 an increase.

28 CHAIRMAN LOCKYER: Could I ask you, of the new

1 wage orders on over-time, which one of them -- manufacturing,
2 transportation, professional technical, mercantile, or public
3 housekeeping -- are restaurants included in?

4 MS. BLACK: It would probably be Order Five,
5 public housekeeping.

6 CHAIRMAN LOCKYER: Are you sure?

7 MS. BLACK: Well, it depends on what job you hold
8 in the particular business.

9 CHAIRMAN LOCKYER: A waiter.

10 MS. BLACK: Again, I mean, it depends on what you
11 do. Many people do cross-over roles.

12 CHAIRMAN LOCKYER: I understand. A waiter. We
13 are talking about the waiters that have this burden.

14 Does anyone here know?

15 Well, so much for all the research and the
16 examples.

17 Did you ask, Senator Lewis, the gentleman if he'd
18 had a vote of the employees to change the hours?

19 SENATOR LEWIS: No.

20 CHAIRMAN LOCKYER: Let me tell you the
21 information I got, because I went and looked at the files and
22 was able to reach 109 CEOs or human resources people who applied
23 in the last year for an exemption under the current law, the old
24 law. One hundred percent of those business people said the
25 current law worked fine, that they were able to work with their
26 employees and get flex time scheduled under the existing law.
27 One hundred percent of the businesses that bothered to do it
28 last year..

1 Like the restaurant man who talks about it, but
2 doesn't apply or work with his employees, I find that
3 interesting information.

4 Senator Ayala.

5 SENATOR AYALA: Mr. Chairman, according to the
6 Industrial Welfare Commission, the Constitution of the State of
7 California dictates that the purpose of this Commission is to
8 provide for minimum wages and for the general welfare of
9 employees. Doesn't mention employers. Also, investigating the
10 comfort, health, safety and welfare of such employees.

11 Let me just ask the both of you, what is your
12 interpretation of the IWC's mission, your obligation to provide
13 for the general welfare of employees?

14 MS. BLACK: Senator, I understand your question,
15 and I think as we spoke earlier this morning, we probably have a
16 philosophical difference.

17 SENATOR AYALA: I asked you this question this
18 morning, but I want you to do it publicly.

19 MS. BLACK: I was going to offer you an example,
20 if I may, of how I live that mandate when I make decisions.

21 There are 15 industry and occupational orders in
22 California. Originally, when we began looking at this
23 particular issue, we were looking at all 15 industry and
24 occupational orders.

25 As we went through those five investigatory
26 hearings on the issue, there were orders, 11 and 12, for
27 example, which made a strong case under broadcasting, motion
28 pictures, that those employees in fact usually work for multiple

1 employers in the course of a week, and therefore would
2 potentially never hit a 40-hour work week. They would, in fact,
3 probably really see a loss of the wages that they earned.

4 When we moved forward with the proposal, we did
5 not include those industry orders, or occupation orders, because
6 we felt that they would be prejudicial to the health and welfare
7 of the employees covered by those particular wage orders.

8 That's just one example, Senator, of my
9 understanding of the mandate of the Commission, and how I
10 applied that to the decisions that I made.

11 And I read letters from many employees who said
12 that, "This rigid scheduling is prejudicial to my being able to
13 balance my work life and my professional life."

14 So, in fact, I respect that you and I may not
15 agree on the ultimate decision as it pertains to the 8-hour day,
16 but I would hope that you would understand that I have
17 demonstrated, according to what I believe and what I have
18 experienced -- and I worked under Wage Order 489 as a working
19 parent -- that I attempted at all times, in fact, to keep that
20 mandate in mind.

21 MR. ALAM: Yes, Senator, I think that you just
22 stated the manifesto of the IWC. And I believe that I have done
23 that by voting no on the primarily so that it should not be
24 changed. For meal and lodging credit, I said no, we don't want
25 to change it. And for the meal periods, you know, the time
26 after 8 hours, I said no.

27 So, it's not that I have not been doing anything
28 from the labor interest.

1 The only thing I think which goes against me is
2 the over-time. Well, if you think that the over-time has
3 changed, is going to devastate California, I really don't
4 agree. Maybe we are talking two different philosophies.

5 But I think I have done my homework. I have
6 studied. I have listened to the testimony. I tried to do my
7 best.

8 I'm a very independent minded person, and I don't
9 accept any influence because that's how I've been trained. I
10 think, you know, that this 40-hour week actually has not
11 decreased or will not decrease the over-time in California. And
12 rather, it will enhance the job opportunities because I think
13 the mandate also dictates that if they are -- if you are putting
14 undue hardships with employers, then you don't have more jobs.
15 And if you don't have jobs, I mean, you forget about over-time.

16 So, over-time just at the discretion of the
17 employer. It's not your privilege, or something that you can
18 ask by force from the employer.

19 So, I think, you know, we even shouldn't be
20 making our budget based on over-time because it can be changed.
21 The over-time situation keeps changing.

22 So, in my opinion, if that's your thinking, it
23 has a disservice to the people of California, then of course I
24 am guilty. But otherwise, I think I've made the right decision,
25 and it's in the welfare of the people of California.

26 SENATOR AYALA: You are the representative of
27 organized labor on that Commission; are you not?

28 MR. ALAM: I was -- I'm not a member of organized

1 labor, but I'm a member of professional engineers union.

2 SENATOR AYALA: Don't you represent labor on the
3 Commission?

4 MR. ALAM: Yes, I do, but I also represent people
5 who are not member of the organized labor, so I have this
6 advantage that I have access to all of the people of California
7 who are workers but are not members of this organized labor.

8 SENATOR AYALA: You've been a member of the union
9 off and on for number of years?

10 MR. ALAM: Yes, that's correct.

11 SENATOR AYALA: In what sense do you consider
12 yourself their representative with the voting you've been
13 experiencing on that Commission?

14 MR. ALAM: Excuse me, Senator?

15 SENATOR AYALA: How do you think you represent
16 labor with the votes you've been casting on that Commission?

17 MR. ALAM: Senator, as I said, I mean, if you see
18 my voting record, it's not that everything has been against the
19 labor. I have a lot of compassion, and because I am labor
20 myself, I know I'm going against myself. If I am finishing this
21 over-time, I am also putting -- throwing the eggs on my feet. I
22 mean, how can a person do that?

23 I think if you see the things in the bigger
24 prospective, you will realize that for the benefit of the
25 majority, sometime you have to take decisions which are not
26 welcomed by everybody.

27 Yes, I think I was representing all the labor,
28 because I go through the issue which confronts the labor very

1 seriously. It's not that I don't know acronyms, this means I am
2 not aware of the issues. Issues to me are very important, and I
3 studied them thoroughly before making my mind.

4 SENATOR AYALA: It's hard to understand how you
5 consider yourself a representative of labor when every union is
6 in opposition to your continuing on the Commission.

7 MR. ALAM: The irony of the fact is that union is
8 the least effected of this ruling of IWC, which has filed a
9 lawsuit against me.

10 I have always been, you know, the state workers
11 have always been on the 40-hour week, like people under
12 construction, and the mining, and the drilling. I mean, not
13 everybody's covered with this 8-hour week -- 8-hour daily
14 over-time.

15 I mean, I never got over-time after 8 hours, but
16 this does not prevent me from thinking that people who are
17 getting it, and who are benefitting from it, but what about the
18 so many things which go along with this over-time? It's not
19 just that, okay, I'm losing my money, but what are you getting
20 in return, and what people are demanding? What is the trend,
21 and how things are changing.

22 So, these things, you know, combined, made me
23 think that 40-hour week was the way to go on this.

24 CHAIRMAN LOCKYER: Ms. Black?

25 MS. BLACK: I just want to follow up on a
26 question you had asked me, and I wasn't sure.

27 You were talking about Order Seven, which is the
28 retail order. Is there something else that you wanted to ask me

1 in regards to that?

2 CHAIRMAN LOCKYER: No, I was talking about the
3 April 11th vote, c through five. It has industries one
4 through five. The ones I mentioned are what were --

5 MS. BLACK: The one, four, five, seven, and nine.
6 But I thought you were specifically going to ask a question
7 pertaining to Order Seven?

8 CHAIRMAN LOCKYER: No, I was trying to find out
9 where the waiters are, since we were talking about waiters. It
10 seems like they're not --

11 MS. BLACK: I was asking about retail. There was
12 something else that you were going to ask in regard --

13 CHAIRMAN LOCKYER: No, I was trying to find the
14 waiters. That seems to be what motivates everybody, but they
15 seem to not be affected by any of the orders that you just made.
16 An example that we hear routinely that seems to have nothing to
17 do with the product of your work.

18 Senator Brulte.

19 SENATOR BRULTE: Ms. Black, could you lay out for
20 me the groups in California, or the areas of employment in
21 California, that are currently not covered by the 8-hour day?

22 MS. BLACK: You're talking about those who are
23 exempt under a collective bargaining agreement?

24 SENATOR BRULTE: Sure, those who are exempt. I
25 mean, this doesn't apply to all categories. There are some
26 categories that have a 40-hour week currently; is that correct?

27 MS. BLACK: You're talking about executives,
28 doctors, lawyers, and individuals who are not covered through

1 the wage orders? Or, in addition, are you asking me about the
2 other orders, such as the motion picture industry?

3 SENATOR BRULTE: I'm asking you right now, under
4 California law, and under statute and regulation, does every
5 employee in California get over-time after 8 hours?

6 MS. BLACK: No.

7 SENATOR BRULTE: Who wouldn't today? Your order
8 doesn't take effect until January 1; is that correct?

9 MS. BLACK: I believe yes, that we're not going
10 to do it --

11 SENATOR BRULTE: Who doesn't get it today?

12 MS. BLACK: Who doesn't get over-time after --

13 SENATOR BRULTE: Yes, who wouldn't get over-time
14 today.

15 If I'm a farmworker, do I get over-time after 8
16 hours?

17 MS. BLACK: No, you have a 10-hour work day and a
18 60-hour work week.

19 SENATOR BRULTE: Why is that the case?

20 MS. BLACK: I believe that that was an issue that
21 was addressed through the Legislature because of the
22 perishability issue pertaining to agriculture. The federal
23 standard as well for agriculture is a 10-hour, 60-hour --
24 actually, it's a 60-hour work week. I don't believe they even
25 have a 10-hour day.

26 SENATOR BRULTE: The Legislature established the
27 60-hour work week for farmworkers?

28 MS. BLACK: It was done before I was involved

1 with the Commission, but if I recall -- no, it probably was
2 through the Industrial Welfare, or through the Commission order.

3 But again, I apologize, Senator Brulte, I wasn't
4 on the Commission at the time that issue was dealt with. But I
5 believe it was, in fact, dealt with through their industry order
6 specifically.

7 As a matter of fact, when this change was brought
8 to the Industrial Welfare, they wanted to extend it to two other
9 wage orders -- handling food products after harvest, and the
10 other agricultural order -- so that it would be concurrent with
11 the original order for the farmworker on the farm, to extend the
12 60-hour work week to those individuals. The Commission chose
13 not to do that.

14 SENATOR BRULTE: So, today, farmworkers don't
15 have 8-hour over-time protection.

16 What other employees wouldn't.

17 MS. BLACK: Again, a public employee. They have
18 that flexibility within to be exempt from the 8-hour day.
19 Legislative staff is exempt from the 8-hour day rule.

20 SENATOR BRULTE: Certainly those that work for
21 anybody on the Rules Committee.

22 MR. ALAM: And construction workers, you know,
23 people who work in mining.

24 SENATOR BRULTE: Mining. Somebody that works in
25 mining doesn't have 8-hour over-time? Why?

26 MR. ALAM: I think these are exempt, and this is
27 how the orders were created when, you know, the IWC was formed.
28 And they found the different industries, you know, under

1 different wage orders. Those industries were kind of exempt
2 from the over-time.

3 SENATOR BRULTE: The labor groups that represent
4 agricultural workers, have they been pounding your door to get
5 an 8-hour work day?

6 MS. BLACK: No, not at my door.

7 SENATOR BRULTE: How about miners?

8 MS. ALAM: No.

9 MS. BLACK: No.

10 SENATOR BRULTE: Why is that? I know I'm asking
11 you to draw a conclusion.

12 MS. BLACK: Nor, I've been puzzled by the fact
13 that nor have public employees, who enjoy this flexibility.

14 I can't answer that. I asked that question many
15 times, if this was, in fact, so important, why, in fact, weren't
16 others actually moving towards the 8-hour day, as opposed so
17 many asking us to go to the 40-hour work week? And I never got
18 a good answer to that, Senator Brulte.

19 SENATOR BRULTE: If your order is implemented
20 January 1, what percentage of the California work force will
21 that apply to?

22 MS. BLACK: Approximately 8 million. Well, it
23 would be less than that, because I don't know that we've
24 actually done the exact numbers of who will be impacted under
25 one, four, five, seven, and nine. It will be the majority of
26 the hourly employees in the State of California who are not
27 otherwise exempt because of the collective bargaining agreement,
28 or public employees, construction or miners, or agricultural

1 field workers.

2 SENATOR BRULTE: Will there be any category of
3 California worker that receives over-time after 8 hours that
4 have not negotiated it through the collective bargaining
5 process?

6 MS. BLACK: I would say few, if any, that I'm
7 aware of.

8 SENATOR BRULTE: Would --

9 MS. BLACK: Again, those who are in the orders
10 that are not impacted, the orders that we did not go into,
11 certainly, that world will in fact remain for those individuals.
12 And again, we did that, I think, because it was specific to the
13 industry or occupation that we were addressing.

14 But, in fact, and I'm not sure that I completely
15 understand your question, but orders one, which covers
16 manufacturing, four, five, seven, and nine, which include
17 professional, technical and clerical, public housekeeping,
18 retail, and transportation, that's probably the majority --
19 representative of the majority of hourly workers in the state.

20 SENATOR BRULTE: By and large, will most
21 employees, then, be covered by this? Those who have already
22 been exempted for whatever reason, and the ones that are covered
23 by your orders, will most employees then have a 40-hour week?

24 CHAIRMAN LOCKYER: A majority, whatever that is.

25 SENATOR BRULTE: I'm confused. If this is such a
26 burden on employees, I mean it seems to me every time there's an
27 issue dealing with farmworkers before this Legislature, there
28 are a number of people that rise to defend farmworkers.

1 But you're telling farmworkers haven't had this
2 protection for years. Is that what you're telling me? I'm just
3 wondering where their advocates are? During the budget process,
4 during committee hearings, there are always advocates for
5 farmworkers here. I wonder where they are, where they've been?

6 MS. BLACK: During the final hearings on the
7 proposal that has been put forth since January, I did receive a
8 letter, as all the Commissioners did, from the UFW, signed by
9 Dolores Huerta, but that's really only been the only particular
10 inquiry on behalf, or opposition letter, on behalf of
11 farmworkers pertaining to this issue.

12 I think there was one other letter that asked for
13 it, but, I mean, two of thousands.

14 SENATOR BRULTE: They opposed the 40-hour week?

15 MS. BLACK: Yes.

16 SENATOR BRULTE: But they have the 60-hour week?

17 MS. BLACK: Yes.

18 SENATOR BRULTE: Did they recommend going back to
19 8-hour for their industry?

20 MS. BLACK: I don't specifically recall in this
21 letter.

22 In the investigatory hearings, there were a few
23 letters that actually suggested that, but in the final phase of
24 the hearings on the proposal, I don't recall.

25 There were individuals who spoke. I think it was
26 even at the last hearing in Los Angeles, that said, no, what we
27 really want is in fact a 7-hour day, and then they said what
28 we'd like is a 6-hour day.

1 CHAIRMAN LOCKYER: So would we.

2 SENATOR BRULTE: If you'd like 14-hour day, run
3 for the Senate.

4 MS. BLACK: I understand.

5 I think I understand what you're asking, and the
6 thing that I think we continue to look at as the Commission is
7 that, yes, it was very clear that union workers didn't want this
8 change in our regulations to occur. It was very clear.

9 Yes, it was very clear from the union leaders
10 that they did not want this change because they felt, although
11 they're exempt because of their collective bargaining agreement.
12 They suggested repeatedly through those hearings that they felt
13 that they would lose that negotiating tool in their next
14 negotiating agreement, or the next time that their collective
15 bargaining agreement was up for renewal.

16 Speaking to the other employees in California
17 that are covered by the Industrial Welfare Commission orders,
18 and that are nonexempt employees, it was very, very little
19 opposition from those who do not have this already through a
20 collective bargaining agreement, but they are impacted employees
21 under the specific orders that were being considered for
22 change. And with very few exceptions, the majority of those
23 letters from those employees asked for, in fact, this kind of
24 change and flexibility.

25 CHAIRMAN LOCKYER: How many letters do you think
26 you got from workers in total? Not a group or union, but just
27 an individual letter from a worker. How many do you think you
28 got?

1 MS. BLACK: That's really difficult to say
2 because many times there's form letters that come in.

3 CHAIRMAN LOCKYER: We're used to that, too.

4 MS. BLACK: Four hundred of these letters.

5 But there certainly have been hundreds. When you
6 consider that -- and I think what you're asking me is, separate
7 the employer letters from the employee letters asking for this
8 change. And I have several of them even with me. I was looking
9 at them again today.

10 There was -- as far as the specific employee that
11 wrote to the Commission, that was not covered under a collective
12 bargaining agreement, that majority clearly spoke in favor of
13 this change from the employees, not the employer. From the
14 employee himself.

15 CHAIRMAN LOCKYER: How many is that?

16 MS. BLACK: Senator, it's hundreds, but I
17 couldn't -- I apologize for not having separated out, you know,
18 of the thousands of letters.

19 CHAIRMAN LOCKYER: I assume they're all on file?

20 MS. BLACK: Absolutely, they're all part of the
21 public record.

22 CHAIRMAN LOCKYER: So, if someone wanted to go
23 through them, they're part of the record?

24 MS. BLACK: They're all part of the public
25 record, absolutely.

26 Senator, the other -- and an issue that we have
27 not necessarily addressed today, Senator Ayala our mandate.

28 Unlike the Legislature, unlike yourselves, when

1 you make a decision, you can make that decision based on your
2 own opinion of that particular issue.

3 As a Commissioner of the Industrial Welfare
4 Commission, not only does it have to be something that's not
5 prejudicial to the health and welfare of employees, but it also
6 has to be something that's substantiated in the public records.
7 It would be foolish for anybody on this Commission to have moved
8 forward with the decision that anyone who wanted to look at the
9 public record would clearly say, that was not in fact supportive
10 of the decision.

11 CHAIRMAN LOCKYER: My impression, having not been
12 at all the hearings, but having received a staff summary of the
13 commentary and so on, is that there is sufficient comment in the
14 public record that would justify the no votes as well as the yes
15 votes on this issue. That both sides can point to the public
16 record for support for that view.

17 MS. BLACK: I would say again, if I were
18 considering those who were not impacted by the change, again,
19 those outside of the collective bargaining agreement, that the
20 employees definitely weighed on the side of asking for this
21 change.

22 But more importantly -- or, not more importantly,
23 but in addition to that, when you look at the terminology and
24 the language in our mandate, and it says, "will not cause undue
25 hardship, harm, to employees or employment opportunities," it's
26 a little bit of a wordy mandate, but the information, the
27 statistical data, not just purely the desires, yes or no, I like
28 this, I oppose it, but the health and safety issues, which are

1 fairly easy to understand, they're there in clear data from
2 other states, the economic studies --

3 CHAIRMAN LOCKYER: The health and safety meaning
4 what? That there are not more injuries when you work long days?

5 MS. BLACK: That the other states, 47 other
6 states who have the 40-hour work week as opposed to the 8-hour
7 day, California in fact has a much higher accident, nonfatal
8 illness -- or nonfatal injury rate than the majority of the
9 other states, highly industrialized states that do not have this
10 8-hour rule. So, it would suggest that the 8-hour rule does not
11 necessarily impact worker safety.

12 CHAIRMAN LOCKYER: Did you hear any alternative
13 explanations of that?

14 MS. BLACK: I continued to ask, Senator,
15 throughout the 18 months, for information.

16 CHAIRMAN LOCKYER: You never heard one?

17 MS. BLACK: It was never suggested to me

18 CHAIRMAN LOCKYER: That there might be another
19 reason for more injuries here than in some of those other
20 settings?

21 MS. BLACK: Senator, I can tell you that I asked,
22 and it was not --

23 CHAIRMAN LOCKYER: But you didn't hear any?

24 MS. BLACK: It was not offered, no.

25 CHAIRMAN LOCKYER: Your point was, there was
26 health and welfare considerations. You were looking for data on
27 that. I'm sorry I interrupted that thought.

28 MS. BLACK: The only other thing in addition,

1 going back to your health and safety question, is that I think
2 for a lot of people, in fact, that was a surprise, because
3 California has very strict requirements.

4 CHAIRMAN LOCKYER: We have a stricter OSHA than
5 in most states.

6 MS. BLACK: Absolutely, so it was actually a
7 surprise to me.

8 I thought that the data would have, in fact,
9 suggested that California had a much better record than the
10 other states, and in fact I was surprised to find this out.

11 CHAIRMAN LOCKYER: I'm sorry, but I don't know
12 who gentleman is in the middle. Should we have introduced you
13 here? Are you keeping these two apart? What's the idea?

14 MR. MITCHELL: My name is Jeff Mitchell. I am
15 legal counsel for the Commission and for Syed Alam in litigation
16 that was filed a couple weeks ago.

17 CHAIRMAN LOCKYER: So, if they need a lawyer,
18 you're ready.

19 Are you armed?

20 MR. MITCHELL: I can run fast.

21 CHAIRMAN LOCKYER: Senator Brulte.

22 SENATOR BRULTE: We define injury differently
23 than other states. That may be one of the variables.

24 Be that as it may, when you looked at this, did
25 you find any activity in the other 47 states to try to conform
26 their 8-hour or their 40-hour over-time rule to California?

27 MS. BLACK: Senator, that was one of the most
28 puzzling aspects to me throughout this process.

1 In 47 other states, states that have much higher
2 percentages of union membership, that one might conclude because
3 of the makeup of their legislatures, or the makeup of their
4 executive branch, the administration of those states, it was
5 very puzzling to me. States which you'd think would embrace
6 labor, if in fact labor wanted to conform to the California
7 8-hour day.

8 I continued to seek out that information, and
9 there was nothing that suggested that these employees in 47
10 other states were not very happy with it. In fact, I saw no
11 evidence of a movement on behalf of labor in any of these other,
12 again, more unionized states, which some might say would be more
13 friendly through their legislature to union concepts, that that
14 was, in fact, an issue in any of those 47 other states.

15 And in fact, Hawaii is now also looking at
16 repealing their 8-hour day. So, if anything, some see this as a
17 regressive movement. I see it as California being progressive
18 for their workers.

19 I understand this, in many people's eyes, is an
20 historic law which dates back to the early 1900s. I'm a working
21 mom. My life is much different than my
22 great-great-grandmother's was 70 years ago. And the needs of
23 most of the people I deal with are much different than they
24 were.

25 Again, it seems as though the trend is going to a
26 40-hour work week. In fact, in the last several months, as
27 Congress has debated the comp. time issue, I have been puzzled
28 by watching labor leaders in other states stand up and talk

1 about the virtues of the 40-hour work week.

2 CHAIRMAN LOCKYER: That's because Congress has
3 talked about eliminating it, which is why, so they wanted to get
4 rid of both protections.

5 MS. BLACK: And I understand that. And not that
6 it's even relevant to these hearings, but I certainly don't
7 believe that this Commission would ever even entertain that
8 particular thought. I know I would not.

9 Again, I don't believe that that's relevant to
10 this hearing, but I understand --

11 CHAIRMAN LOCKYER: It's not at the moment.

12 Senator Ayala.

13 SENATOR AYALA: Yes, reference was made to the
14 farmworkers. I picked grapes and figs in the Central Valley
15 when I was a youngster, and we worked from sun up to sun down,
16 piecemeal. It wasn't by the hour. So, this wouldn't affect
17 them at all.

18 So, I don't think that the farmworkers'
19 conditions are involved with this type of work, because those
20 folks work in productivity and piecemeal. The longer they work,
21 the more they make.

22 I'd like to think that conditions have improved
23 since I picked figs and grapes in the Central Valley. I think
24 we ought to limit the working hours to those folks so they can
25 make a minimum wage at least and survive.

26 So, the farmworkers' conditions do not enter this
27 picture at all, unless they've changed, and I hope they have.
28 They have nothing to do with what we're discussing here today.

1 MS. BLACK: Senator Ayala, if I might add,
2 Senator Brulte had asked who else is exempt from this current
3 40-hour work week.

4 I grew up, from the time I was 12 years old,
5 working for my father, which means I was exempt from any of
6 these rules.

7 SENATOR AYALA: You worked for someone else,
8 working for your father? That's not relevant, either.

9 MS. BLACK: No, I understand, but his philosophy
10 is that you got to work earlier, and you were the last one to
11 leave. And it was many, many 15-hour days on the farm because
12 my father had an employee in his daughter that was exempt from
13 those rules.

14 SENATOR AYALA: I probably worked for your
15 father, too.

16 CHAIRMAN LOCKYER: I had that problem, too.

17 What kind of crops do you grow? How many acres?

18 MS. BLACK: I farm row crops -- vegetables,
19 melons, garlic, lettuce, tomatoes.

20 SENATOR BRULTE: You may be in trouble now.

21 CHAIRMAN LOCKYER: They're going to tease me
22 about vegetables now. I think it's good that we grow them here
23 for export.

24 MS. BLACK: I can support that as well.

25 CHAIRMAN LOCKYER: And I assume just by the
26 nature of at least some of these specialty crops, there are
27 short harvest periods in some instances where you work a crew
28 more than 8 hours?

1 MS. BLACK: That's true.

2 CHAIRMAN LOCKYER: I think that's the reason, as
3 I understand it.

4 MS. BLACK: Because it's a very market-driven
5 business. When lettuce is three dollars a carton, you really
6 aren't in a hurry to go pick it. When it hits ten, twelve
7 dollars a carton, you want to certainly pack as much of it as
8 you can.

9 CHAIRMAN LOCKYER: Let me ask, at the time the
10 April 11th meeting occurred, I understand that Commissioner
11 Center also recommended or made a motion to support the Knox and
12 Solis bills that would allow for four hours a week to be, in
13 effect, moved around so it wouldn't be subject to over-time.

14 Now, the Commission voted two-to-three to oppose
15 that, which seems to be a different kind of statement than the
16 ones you've made so far, that you thought your obligation under
17 the law, and that the record and facts justified eliminating
18 over-time.

19 Why were you opposed to endorsing those two
20 measures.

21 MS. BLACK: I can only speak for myself,
22 Mr. Chairman.

23 Four hours of makeup time did not adequately
24 address the requests of the many employees that wrote letters to
25 this Commission. They, in fact, were often looking for
26 unplanned days off, where, ironically, I talked to many people
27 that say -- employees that said, "I'd love to come testify at
28 your hearing, but I have to take a day off without pay to do

1 that." Four hour makeup time does not address those concerns
2 for those employees.

3 CHAIRMAN LOCKYER: Mr. Alam.

4 MR. ALAM: Well, I think I have some different
5 explanation, but that goes back to the labor, that when I
6 contacted the labor, they kind of, you know, outcast me. Did
7 not try to communicate with me, tell me their concerns. Then,
8 at the last minute, when we're there for the vote, they send all
9 this kind of motions, you know, through Chuck Center.

10 And I, you know, I even did not have an idea that
11 how it's going to affect, and I did not have time to really
12 think about that.

13 I had no problem giving, you know, flex time,
14 four hours, two hours, as the workers demand. My only concern
15 was that I was -- I had no chance to read that, and I did not
16 know the consequences, you know, how it will be received by
17 other people.

18 CHAIRMAN LOCKYER: Senator Brulte.

19 SENATOR BRULTE: How often do you adopt
20 resolutions to recommend to the Legislature adoption or defeat
21 of bills?

22 MS. BLACK: It has not traditionally been
23 something that I've done in three years on the Commission, to
24 officially support or oppose bills.

25 The Department of Industrial Relations does that,
26 but the Commission has not historically, in my term, done that.

27 SENATOR BRULTE: And in this case, they didn't
28 that either, because it lost.

1 CHAIRMAN LOCKYER: I guess if there aren't
2 further questions, we ought to take some brief testimony. So,
3 if maybe the three of you could give us a little room for a
4 couple of minutes, and a couple of chairs in front.

5 We will just ask those supporters and opponents
6 to be very brief and, hopefully, nonrepetitive.

7 Thank you very much.

8 MR. WASHINGTON: Good afternoon, Mr. Chairman
9 and Members.

10 In my particular case, it's hard not to be
11 repetitive. I've been at this for so long, it's very difficult
12 to finds something new to say.

13 I'm Willie Washington with the California
14 Manufacturers Association.

15 Fortunately, I'm here today, though, in support
16 of the two Commissioners who are here for confirmation. And I'd
17 just kind of like to briefly go over some of the things and all
18 that we've gone through over last 18 months.

19 First of all, I'm an advocate, and that's what I
20 do for a living currently, and that's exactly what I tried to do
21 in persuading those who are making that decision, that we ought
22 to eliminate the daily over-time requirement in California.

23 I'm primarily responsible for Wage Order One, the
24 manufacturing, and Four that deals with professional, technical,
25 and the others. So, those are the areas in which I claim some
26 amounts of expertise.

27 I've talked to each Commissioner who's been
28 appointed, those who were there and those who were no longer

1 there, and the new ones as they came on board in an effort to
2 try to persuade them to see things the way that we thought they
3 would be more manufacturers in the State of California. Talked
4 to each one of them.

5 We invited each one of these members to
6 communicate with our members, whether they were the companies,
7 or whether or not they were the employer representatives here in
8 Sacramento. We tried to make that happen so that we could have
9 this exchange of information between the two as to why we
10 thought it was important that California move into the current
11 century as far as the working hours is concerned.

12 I attended every meeting that they held. I
13 stayed the duration of every meeting that they held. I took
14 notes as best I could, and I tried to respond to every issue
15 that was raised so that I could provide that information to the
16 Commissioners.

17 We've done such things as the safety issue. I
18 have provided the information on studies that were done by my
19 members who've been in business ever since the industrialized
20 revolution began, and who operate in many of the 50 states who
21 have their own numbers, and they can compare it to the national
22 standards, to show you that in California, where we have those
23 companies who are indeed already working 12-hour or longer
24 shifts, or someplace in between, that we are as safe as they are
25 in other states.

26 And I can explain, if you would like to have some
27 information after I go through this, some of the reasons why we
28 would have some of these differences from the national report

1 that we provided.

2 We've provided studies. We provided the
3 expertise on the effect of longer hours on people, people who
4 worked 12 hours, 10 hours, or whatever. We've got studies.
5 We've got organizations who specialize in that. We provided
6 that information to the Commissioners.

7 We provided information relative to the State of
8 California as you compare it to the other states who do not have
9 a daily over-time requirement. First of all, we went after
10 those industrialized states that most resemble California.
11 There was about 15 of those. We submitted evidence to the
12 Commissioners that indicated clearly that, when you look at all
13 of the other things and held them constant, that those workers
14 in other states that did not have the daily over-time
15 requirement earned more money than those workers in
16 California.

17 So, California would be in disadvantage in terms
18 of their earnings because of the daily over-time rule.

19 We looked at the Hammer-Smith and Trejo and
20 Hammer-Mesh study. After reading through that at least five
21 times, there was one major conclusion that I drew from the
22 report, Mr. Chairman. First of all, for the first time, and the
23 only one that I know of, you actually studied the situation that
24 we are dealing with here, the daily over-time in the State of
25 California and the effect that it has on employees in
26 California.

27 What they found is that in California, about 10
28 percent of all males -- this study dealt with males, so it

1 specifically related to that -- 10 percent of all males in
2 California would fall into the category who would be impacted by
3 the daily over-time and the subsequent changes that were being
4 proposed.

5 But the report went on further to say in essence
6 that of that 10 percent who's eligible, there's only one percent
7 who actually would be impacted by it. That is, those who work
8 more than 8 hours in a day, but less than 40 hours in a week.
9 So, of this potential 8.1 million, and I won't squabble whether
10 it's up or down or whatever on it, the effects are the same,
11 we're talking approximately one percent.

12 Mr. Chairman, I've listened to these committees
13 go on for years up here, and out of a population of 8 million,
14 it's very difficult for me to understand why we would make
15 public policy that would affect the other 99 percent, when we
16 have a potential one percent that would be impacted. It's very
17 difficult for the element of change, and no one, absolutely no
18 one, is harmed by a change. That would be a very, have unusual
19 situation.

20 Mr. Chairman, I will conclude there. You had
21 some questions relative to the safety and some of the other
22 things. If you choose to ask the question, I'll be happy to
23 stay here and answer them. Otherwise, I wanted to be as brief
24 and give you the chance to hear from some of the other people.

25 CHAIRMAN LOCKYER: Thank you.

26 MS. BROYLES: Good afternoon, Mr. Chairman,
27 Members. I'm Julie Broyles from the California Chamber of
28 Commerce.

1 We are here in support of both of the
2 Commissioners. We believe That Robyn Black, in her capacity as
3 an employer representative, truly has worked very, very hard to
4 be fair and hear all sides of this issue, whether it's from an
5 unrepresented worker, or from a represented worker, or from an
6 employer who would like to take advantage of the change in the
7 over-time rules to provide the flexibility that their employees
8 are asking for.

9 She's had a very deep personal commitment to the
10 Commission to ensure again that all sides had a fair hearing,
11 that all possible concerns and benefits actually had a fair
12 airing.

13 She has endured a lot of personal attacks that I
14 personally very not seen given to any Commissioner or to a
15 Legislator before, whether it's personal insults being called to
16 her, or the physical brandishing of a gun.

17 CHAIRMAN LOCKYER: Sometime I'll introduce you to
18 those that have been involved in Smog Two. There are plenty of
19 stories.

20 MS. BROYLES: It truly has been an eye-opening
21 experience going through all of the hearings with the
22 Commission. Mr. Alam, I think, gave the hardest vote there
23 because he truly, in my conversations with him after the vote
24 last Friday, felt that he was making a vote that did not just
25 represent those with an union membership, but those employees in
26 California who actually had asked for this change and were not
27 able to enjoy it the way a lot of the union members have been
28 able to in California.

1 I know that you have a lot of other people who
2 would like to speak, but we very, very strongly support the
3 nomination and confirmation of both Robyn Black and Syed Alam.

4 One last thing. The waiters are under Wage Order
5 Number Five, and I have a copy of wage order, if you'd like it.

6 MR. GABRIEL: Senator and Members of the Rules
7 Committee, my name Roy Gabriel, representing the California Farm
8 Bureau Federation.

9 And I'm here to indicate that I've known Robyn
10 Black for a number of years prior to her voluntary assignment
11 before the Industrial Welfare Commission. I just want to
12 indicate that she's been very active and President of the
13 California Women for Agriculture, and has attempted to reach
14 out, and been a consensus builder in her efforts to try to, you
15 know, represent her interests to the urban constituency and to
16 other Legislators. I've always felt that she's been a very fair
17 individual in reaching out to try to understand both sides of an
18 issue.

19 CHAIRMAN LOCKYER: Okay, other comment?

20 MR. RANKIN: Mr. Chair, Members, Tom Rankin,
21 representing the California Labor Federation.

22 Before I go into the issue of the individuals
23 here, I'd like to say a couple words about how the wage orders
24 work, because there seems -- I don't think that was clear
25 necessarily from the testimony.

26 Right now, the wage orders that are affected
27 here, all of them allow for a 10-hour day, and some of them
28 allow for a 12-hour day, but the employees have to have a vote

1 before the 8-hour day is changed. So, what we're seeing here --

2 CHAIRMAN LOCKYER: You mean in the current
3 orders?

4 MR. RANKIN: Under the current orders.

5 So, what's happening here is a deprivation of
6 choice for employees, because under the proposed -- which we're
7 in court on -- new orders, the employees will have no choice.
8 And what that's going to mean, not just for part-time employees,
9 but for full-time employees, they can suddenly be required by
10 their employer, and their employer can fire them if they don't
11 go along with it, to work four 10s.

12 Now, suppose an employee's worked at a place for
13 10 years, is very happy with the 8-hour day, and is suddenly
14 told, you've got to work four 10s, because the employer can do
15 that without any disincentive of paying over-time any more.
16 That employee is unable to get child care for 10 hours a day.
17 That employee is going to have to make a very hard decision,
18 probably going to have to quit the job, or not take care of the
19 kids. That's what this means to full-time employees.

20 What it means to part-time employees -- and
21 approximately 20 percent of the employees in this state,
22 according to EDD, are part-time employees, most of them are
23 women, women are disproportionately part-time workers --
24 part-time workers who don't work 40 hours a week would never be
25 eligible for over-time pay under this proposal of the IWC, under
26 their current regulations for these five wage orders.

27 In other words, that waitress who comes into work
28 who needs child care at the end of the day, and her replacement

1 doesn't come in at the end of her shift, can be told by her
2 employer, oh, you've got to work four more hours today. And the
3 employer pays no time-and-a-half for those four more hours.

4 Presently, at least there's some disincentive to
5 stop the employer from doing that. Under what they've done,
6 there is none, so that waitress is going to be taking home less
7 pay. And if she doesn't want to work those extra hours, she can
8 be fired. It's the employer's prerogative.

9 The wage orders that were overturned at least
10 gave employees some say in over-time work.

11 Also, I need to explain, maybe, the purpose of
12 over-time pay in the first place. It was to spread employment,
13 in part, as well as to give employees who are forced to work
14 Inconvenient hours some extra compensation for it.

15 It is proper that there be less over-time in
16 California, because those wages orders are working and spreading
17 employment. If you look at one of those studies, you can guess
18 that if there is no over-time pay, daily over-time pay,
19 unemployment in this state will increase by a small percentage.
20 That's not what we want in California.

21 In terms of the individual candidates, Syed Alam
22 is hardly a representative of organized labor. A member of his
23 organization can talk about his relationship to the
24 organization, but I'll just talk about what he did once he was
25 on the IWC.

26 We had a meeting, several labor people, with Syed
27 right after he was named and talked about the problem. His
28 first act of voting was to name wage boards, name labor people

1 on wage boards.

2 His second act in voting was to vote --

3 CHAIRMAN LOCKYER: What do you mean name?

4 MR. RANKIN: We were opposed to setting up wage
5 boards on this issue. There was no evidence in the prior
6 hearings that this was prejudicial to health and welfare of
7 employees.

8 CHAIRMAN LOCKYER: So, that was your first
9 objection?

10 MR. RANKIN: First problem.

11 The second problem, he voted, of course, after
12 the wage boards, which were half labor and half management --
13 labor on one side, management on the other, which should have
14 given some indication of labor's views -- he voted to go ahead
15 and have more hearings. And then finally he voted to eliminate
16 daily over-time.

17 There's no question of his failure to represent
18 the issue of workers in the State of California on this issue.
19 Workers will lose probably about a billion dollars in over-time
20 pay a year under this. It's hardly in their interest to
21 eliminate daily overtime pay.

22 Robyn Black, before I go on Robyn Black, one
23 general issue that applies to both candidates.

24 The whole time, part of the time, the whole time
25 both of them were on there, they faced another issue, not just
26 daily over-time but minimum wage. Why didn't they vote to
27 increase the minimum wage? That's their duty.

28 Syed Alam sat here and told you he would vote to

1 increase the minimum wage. Well, he sat on the IWC when that
2 was a potential issue. He didn't raise a word, raise his hand
3 about the minimum wage.

4 Robyn Black didn't do anything to increase the
5 minimum wage, even after an initiative was placed on the
6 ballot. She should have gotten some indication of how people,
7 working people felt about the need to increase the minimum
8 wage.

9 In terms of her desire to be fair, I'd like to
10 point out to you a couple Of instances which indicate to the
11 contrary. She engaged in a debate here in Sacramento before the
12 local Industrial Relations Research Association with Barry Broad
13 from the Teamsters Union. I think it was in the fall, probably
14 September of 1996, before this matter had gone through the
15 process. And which side of the debate did she take? That daily
16 over-time should be eliminated. This was before wage boards had
17 met, before the final hearings. She had her position down
18 already.

19 Second instance, on the last day of the hearings,
20 the public hearings when -- the last day the record was open,
21 there was introduced, at the behest of the Department of
22 Industrial Relations, a Hoover Institute study which was
23 mentioned here. It was introduced at a time that no one,
24 except someone who was there that day, off the top of their
25 head, could try to refute that study, because the record was
26 closed at the end of that meeting.

27 Now, that doesn't strike me as exactly fair
28 because it would have been very easy for the IWC to put off

1 their vote, to hold another public hearing.

2 CHAIRMAN LOCKYER: Did anyone ask them to do
3 that?

4 MR. RANKIN: They were asked to do that, and they
5 didn't do it.

6 Another instance, one of the instructions to the
7 wage boards was that they should seek to look at this issue in a
8 way that protected employees. At least they instructed the wage
9 boards to do that, and the wage boards couldn't find a way of
10 doing that, even though the four-hour provision was -- makeup
11 time provision was proposed, and other things were proposed.

12 The final vote of the IWC took away all
13 protections for employees, including primarily the voting
14 provisions. And it's interesting that the public member of the
15 IWC at the meeting when that action was taken took about 10
16 minutes to refute that Hoover Institute study and talk about how
17 simplistic and inaccurate it was, and voted against eliminating
18 daily over-time. That was the public member, let alone the
19 labor member.

20 Robyn Black also at that meeting allowed a new
21 member of the IWC, who was appointed after Terry Arnold was
22 withdrawn, to vote on eliminating daily over-time, after it was
23 pointed out to her that the Government Code requires a 15-day
24 period were a vacancy is left vacant until an appointment is
25 made. There was probably 5 days in between the withdrawal of
26 Terry Arnold and the appointment of Cynthia Neff.

27 CHAIRMAN LOCKYER: Does that mean that those
28 actions were illegal?

1 MR. RANKIN: Well, that's an interesting question
2 that we are looking into.

3 But in general, we believe the actions of the IWC
4 were illegal, and we've told them that many times, as have a
5 number of Legislators. We believe they took into their hands
6 authority that belongs in the Legislature and does not belong to
7 the IWC. Whereas, they might be able to have over-time
8 provisions and talk about them, it is not within their purview
9 to eliminate daily over-time altogether. That's what they voted
10 to do in these five wage orders, and we strongly oppose their
11 confirmation.

12 CHAIRMAN LOCKYER: Please be nonrepetitive, if
13 you think that's possible.

14 MR. MAHAN: I will be brief and nonrepetitive.
15 I didn't move as fast as Tom did.

16 I'm a supporter of the confirmation
17 recommendation of the two Commissioners that are before you. My
18 name is Paul Mahan. I represent the California Trucking
19 Association, and we strongly urge your support or recommendation
20 of confirmation of both of the Commissioners that have appeared
21 before this Committee.

22 CHAIRMAN LOCKYER: Which order affects trucking?

23 MR. MAHAN: Nine. Nine dash ninety.

24 CHAIRMAN LOCKYER: Can you estimate for us how
25 many trucking employees would be affected in California?

26 MR. MAHAN: I'm not sure. We've got over 300,000
27 employees, but most of the drivers are already exempt because
28 their hours of service and qualifications are already controlled

1 by the Department of Transportation or the California Highway
2 Patrol.

3 CHAIRMAN LOCKYER: What are the rules basically?
4 How long can they drive at a stretch without a break?

5 MR. MAHAN: I think it's about 10 hours a day, 60
6 hours a week, but then we've got other employees, you know, in
7 the office, the clericals, the dispatchers, the warehouse,
8 mechanics, and all the others.

9 CHAIRMAN LOCKYER: That aren't subject to that?

10 MR. MAHAN: That are not subject to that.

11 CHAIRMAN LOCKYER: Thank you.

12 MS. SUTHERLAND: I will be brief. I am Shannon
13 Sutherland with the California Nurses Association.

14 We echo the sentiments Mr. Rankin represented.
15 We too were in attendance at all of the hearings, and the
16 activities that he just discussed were as they appeared to be.

17 The primary issue for nurses was the fact that
18 with the restructuring, nurses are more and more on attack in
19 the hospitals, and the 8-hour day did provide an effective
20 barrier to staffing abuses. And that was one of the main things
21 that we highlighted, was the fear that nurses would not be
22 replaced and would be required to work many hours after their
23 designated shift. I don't need to detail the implications that
24 has on safe patient care, as well as the health and safety of
25 the workers.

26 In addition, the child care issue was very real
27 to us, having people stay long after their shift is over and
28 could not make alternative arrangements.

1 So again, we are strongly opposed to the
2 reappointment of both Syed Alam and Robyn Black.

3 CHAIRMAN LOCKYER: Thank you.

4 MR. PELOTE: Mr. Chairman and Members, my name is
5 Willie Pelote, representing the American Federation of State,
6 County and Municipal Employees, the largest public employee
7 union in this nation with 1.4 million members. I represent the
8 United Nurses of California in Southern California and all other
9 kinds of hospitals.

10 And they want -- we want to make it clear today
11 that we are strongly opposed to the IWC Commissioners being
12 confirmed. And we want to just echo the comments of Tom Rankin
13 for the California Federation of Labor as well.

14 Thank you.

15 MR. READ: Mr. Chairman and Members, Aaron Read,
16 representing the Professional Engineers in California
17 Government, the organization to which Mr. Alam belongs
18 currently.

19 I would like to point out that his membership was
20 only renewed, we believe, after he made application for this
21 particular position. Throughout the last eight years in which
22 he's been employed by the State of California, he's been a
23 member off and on throughout that period, but was not a member,
24 as near as we can tell, when he took out the papers from the
25 Governor's Office. Which leads one to wonder whether it was a
26 legal appointment at the time.

27 We certainly also question whether it's a legal
28 appointment even if he was a member because under Labor Code

1 Section 70.1 it says, and I quote, "The Industrial Welfare
2 Commission shall be composed of two representatives of organized
3 labor who are members of recognized labor organizations." He
4 fits the latter requirement of being a member, but not of being
5 a representative of our organization.

6 I've been the advocate for PEG for 19 years, and
7 I've never had an occasion to see or meet or hear his name. And
8 it is our understanding that in the term representative of that
9 organization, they really should be a person who has been in
10 some role -- a chapter president, a member of the board of
11 directors, on the legislative committee -- some role where they
12 have some knowledge.

13 So, in a deposition which we took, which I've
14 asked that excerpts of it be passed out to the Committee today,
15 there were numerous questions asked by our counsel of him
16 recently. A number of those questions included his familiarity
17 with labor issues and with our organization. And basically on
18 all counts, he was unable to answer the questions.

19 He doesn't know who our president is PEG. He
20 doesn't know what the term AFL-CIO means. Or Mr. Pelote
21 mentioned AFSCME being the largest organization in the country,
22 does not know what those letters mean, or the letters SEIU, or
23 any of the letters that some of us in the labor area know on a
24 regular basis. So, one would seriously --

25 SENATOR AYALA: Why is that necessary, that they
26 have all this background? If they represent if working folks,
27 as they should, why do they have to be members of a union?

28 MR. READ: The law that I just read to you,

1 Senator Ayala, requires that this position be that of organized
2 labor.

3 It was done in fairness. It was done for
4 balance. The board has five members.

5 SENATOR AYALA: I understand that.

6 MR. READ: And the two from management, if you
7 will, two from labor.

8 SENATOR AYALA: I could never participate because
9 I'm not a member of the union?

10 MR. READ: According to this law, that is
11 correct.

12 CHAIRMAN LOCKYER: You could be a public member,
13 but not a union representative, is his point.

14 MR. READ: But I consider you an honorary member
15 of all of my groups.

16 [Laughter.]

17 CHAIRMAN LOCKYER: As soon as you start paying
18 dues, then you can even be --

19 SENATOR AYALA: I can vote.

20 CHAIRMAN LOCKYER: Yes, you can vote.

21 Have you concluded?

22 MR. READ: Yes, sir. I'll be mercifully short.

23 CHAIRMAN LOCKYER: Thank you very much.

24 Other comments?

25 MR. ALLEN: I'm Ward Allen with the Teamsters 228
26 and 952 today.

27 I would be honored to have Senator Ayala
28 represent me as a labor representative if I ever lost my job.

1 Boy, you can bet that.

2 And there's 322,000 truck drivers in California.
3 The 10 hours actually pertains to hours of service, not
4 compensatory hours. Over-time after eight would apply to them.
5 But the 10 hours is actually hours of service, the hours they
6 can legally drive.

7 We would echo everything that Tom Rankin said in
8 his fine presentation, and we are opposed to the two nominees.

9 Thank you, Mr. Chairman

10 CHAIRMAN LOCKYER: Thank you.

11 Anyone I neglected to hear from? Are there other
12 questions from Members? Questions of the nominees or anyone
13 else?

14 SENATOR HUGHES: I don't want to drag this out
15 too long, but --

16 CHAIRMAN LOCKYER: Do you want to hear from one
17 of the nominees?

18 SENATOR HUGHES: Yes.

19 Commissioner Black has a very interesting
20 background, and I'm interested in the fact that your father is
21 in agriculture; right?

22 MS. BLACK: I'm fourth generation with my father,
23 my grandfather, and my brother.

24 SENATOR HUGHES: That's wonderful, because you
25 feed the nation, and they're all hungry.

26 I want to know if you produce a lot of broccoli.

27 CHAIRMAN LOCKYER: George Bush won't like that.

28 SENATOR HUGHES: I want you to know, I like

broccoli, even though Bush and Mr. Lockyer don't like broccoli. I like vegetables.

MS. BLACK: Senator, I'm so happy to hear that you like broccoli. I truly am. It not only makes me happy, but Dad and my brother will all be happy when I go home.

CHAIRMAN LOCKYER: I have to interrupt to tell you that in my top ten list, if politics were a garden, broccoli is Diane Feinstein. Meaning, except I'd love to buy a few, vigorously marketed, accepted by most as inevitable.

[Laughter.]

CHAIRMAN LOCKYER: I'll tell you what Wilson, Brown and others are, if you want to get me started here.

Go ahead.

MS. BLACK: Do we potentially have a marketing opportunity here? That's what I'm hearing.

SENATOR HUGHES: My point is, I think it's wonderful that you raise fruits and vegetables because many of my constituents don't have an opportunity to eat the steaks that Mr. Lockyer eats, or some other Members in this room.

CHAIRMAN LOCKYER: The pizza.

SENATOR HUGHES: Or the pizza, the junk foods that he likes. And I think that vegetables certainly nourish them. I'm very proud that our state is a big agricultural state.

Now, I was getting to my point. Do you feel, and you mentioned the farmworkers early on, do you feel that people have a right to work over-time and be paid over-time wages? Because you gave the Farmworkers Union as an example of people

1 who don't work 8-hour days because of the harvesting.

2 And don't you feel that the nature of the work
3 would better dictate to you a decision as to whether they were
4 working long hours or not? The nature of the very labor itself?

5 MS. BLACK: Are you talking about because of the
6 difficulty, and that it's a very strenuous profession?

7 SENATOR HUGHES: That's correct.

8 MS. BLACK: Are you asking if I would support a
9 repeal to 8 hours for farmworkers? Is that what you're asking?

10 SENATOR HUGHES: Suppose the farmworkers came
11 here, and they said they only wanted to work 8 hours, and they
12 wanted over-time. Would you vote for them to get that?

13 MS. BLACK: Senator, I want to answer very
14 honestly for you.

15 The business side of me is going to probably
16 recoil at the idea of another increase in the cost of doing
17 business in California.

18 However, as with any issue --

19 SENATOR HUGHES: But you gave that as an example.

20 MS. BLACK: I was asked a question pertaining to
21 that particular industry, and I tried to answer that question.

22 In answering, and again, trying to further answer
23 your question again, though I may have great reservation, and I
24 probably would bring a bias somewhat to the table in terms of
25 changing that law, I would probably even have to recuse myself
26 as a Commissioner because it would --

27 SENATOR HUGHES: It would be a conflict of
28 interest, so that you would not vote --

1 MS. BLACK: I would probably --

2 SENATOR HUGHES: -- on agricultural issues, is
3 what you're telling me?

4 MS. BLACK: No, not necessarily against all
5 agricultural issues, because I have looked at agricultural
6 issues in the past.

7 But for myself, because that would have a direct
8 financial impact on my business, I don't believe that I could
9 fairly address that issue as an appointed official with the
10 authority to make that particular change in the law.

11 I would have to admit that that would have
12 serious financial implications on me, and I would conflict out
13 of that one.

14 That doesn't say that I can't look at other
15 issues that affect agriculture, because in fact, two years ago
16 we had an issue pertaining to the mandatory day off in the nut
17 industry. And it was an issue that I worked on. I ultimately
18 voted on, and I think I acted on as Chairman.

19 But that issue, I think, I would really struggle
20 with. And I don't say that I support or oppose it. I'm saying
21 that I'd probably have to recuse myself.

22 SENATOR HUGHES: So that you probably would not
23 vote on the agricultural issues; yes or no?

24 MS. BLACK: On that specific one, because of the
25 financial implications involved --

26 SENATOR HUGHES: Anything that affects money.

27 But the financial implications you're talking
28 about of the industry, but I'm talking about the financial

1 rewards or deficits of the laborers.

2 That's something, when you say the financial
3 issues, it goes both ways.

4 MS. BLACK: Oh, I understand.

5 SENATOR HUGHES: Not just that the industry makes
6 the money, but the worker makes the money.

7 MS. BLACK: And I completely understand that,
8 Senator Hughes.

9 I think some people have mentioned to you that in
10 my past, in many of the capacities that I have served in, I have
11 tried very hard to bring issues that affect farmworkers to the
12 table. I grew up with many of the farmworkers that work for my
13 particular family farming operation. I've worked with the
14 second and third generations who are there, working on our
15 family operation.

16 I would dare offer this body the fact, or submit
17 to you that I care as much about the health and welfare of those
18 employees as probably anybody else in this room, because our
19 relationship is intertwined. We're one and the same. We are a
20 partnership.

21 There's many issues that I've worked on
22 pertaining to agricultural workers, pertaining to how do we
23 protect them in the environment of farm labor contractors; how
24 do we make sure that all the enforcement aspects are not only
25 adhered to, but how can we do a better job of education? Do we
26 need to be doing more?

27 I think you can talk to a great number of members
28 in this Legislature on both the Senate and the Assembly that I

1 have talked to advancing pro-farmworker legislation that I think
2 is not always to the benefit of the farmer, but to the benefit
3 of the farmworker. I think I'm a very fair individual on those
4 issues.

5 But you're talking about an issue, or you're
6 asking about an issue that would affect the bottom line of my
7 business. And so, for that particular reason, I would just
8 recuse myself, Senator, from the potential.

9 That doesn't say that I don't think I could be
10 fair, but even if I were fair, the perception would probably be
11 that I were not. I just wouldn't. I would conflict out.

12 SENATOR HUGHES: Let me tell you, I think that
13 anyone who has worked for a relative, or has a relative that
14 owns a business would have, perhaps, some of the biases that you
15 have because it's really difficult. How do you tell your
16 parents you're not working? And your parents say that you work
17 for six hours a day, and they own the business. Are you going
18 to tell them, no, you won't work but four hours a day because
19 that's all that you want to work?

20 So, let me go on.

21 MS. BLACK: My father wouldn't listen to me in
22 that circumstance.

23 [Laughter.]

24 SENATOR HUGHES: I'm sure he wouldn't.

25 Now, let's talk about voluntary over-time. Do
26 you believe that people should have the right to try to make
27 more money for their families, especially if there's only one
28 person working in the whole household, and it's a fairly

1 substantial sized family, and the cost of living in the locality
2 that they're in is very high, rents and property are very high?
3 Do you think that people should have an opportunity to
4 legitimately earn more money to meet their family needs?

5 MS. BLACK: I would agree with you, Senator. I
6 do not suggest that we eliminate over-time pay in California.

7 SENATOR HUGHES: That's not my question.

8 I said, do you think that people should have an
9 opportunity to work voluntarily over-time, and their employer
10 would give them commensurate pay for work performed?

11 MS. BLACK: Are you talking about comp. time
12 issue, or are you talking about would I --

13 SENATOR HUGHES: Over-time.

14 MS. BLACK: I understand that.

15 I support voluntary over-time. I do not support,
16 I believe at this time, although this has not been an issue
17 before this Commission, I have concerns pertaining to mandatory
18 over-time. That is not an issue that's been before the
19 Commission.

20 Senator, if I don't understand your question
21 directly, I apologize.

22 Yes, I support over-time pay. I'm not suggesting
23 that we eliminate it. I'm suggesting that we allow flexibility
24 within the work week to accommodate personal life and work life,
25 and still have over-time in excess of 40 hours.

26 SENATOR HUGHES: Well, that wasn't my question.

27 On April the 11th at a meeting of the Commission,
28 there was a vote regarding over-time, that over-time be

1 voluntary on the part of the employee. And that motion died
2 because there was no second.

3 You voted against it. Is that not correct?

4 MS. BLACK: It died for lack of second. There
5 was never a vote.

6 SENATOR HUGHES: Yes, but it would never be a
7 vote unless it got a second.

8 And why didn't you give it a second if you
9 believe people have a right to work over-time?

10 MS. BLACK: I don't suggest that I believe people
11 have a right to work over-time. I think that the employer ought
12 to have the ability to contain their costs. They incur the 50
13 percent penalty in labor costs.

14 And I apologize. I have difficulty understanding
15 exactly where you were going with that particular question

16 SENATOR HUGHES: My question was, why didn't you
17 vote to second the motion if you believe people should have an
18 opportunity to volunteer to work over-time?

19 MS. BLACK: But I think that's almost, forgive
20 me, Senator, but it's over simplifying the issue in many ways.

21 To suggest do I support their ability to
22 voluntarily work over-time, yes.

23 To suggest that an employee can, if they choose,
24 work over-time, I think that's an issue between the employer and
25 the employee. The employer's one who's going to incur the 50
26 percent penalty of the over-time cost. I don't believe it's
27 purely at the discretion of the employee.

28 In addition to that, if I may, Senator, during

1 the process of the Industrial Welfare Commission and our rules
2 and procedure, unlike the Legislature, unlike yourselves, who
3 can accept amendment, notice of file, and accept a change, those
4 kinds of changes that are offered at that particular end of the
5 process -- or, maybe end of the process is not the correct
6 word -- but the substantive amendments that were being offered
7 in that particular day would require possibly even going back to
8 the investigatory hearings, charging them back to wage boards,
9 putting them out to new hearings. It's not is a simple
10 procedure for us.

11 So, for many reasons that I believe the motion
12 died for lack of a second --

13 SENATOR HUGHES: But I'm saying, if you believed
14 in the opportunity for a person to work over-time, you were
15 derelict in your duty by not volunteering to second the motion,
16 so therefore, the motion never had an opportunity to make a
17 change in the law.

18 Let me go on to another measure. I don't want to
19 stay on that too long, because sometimes silence gives consent,
20 and you gave consent for it to die.

21 MS. BLACK: For many reasons, Senator.

22 SENATOR HUGHES: All right.

23 The other problem that I had there was another
24 motion on that date that employers be responsible for child care
25 expenses incurred by the employee as a result of involuntary
26 over-time, involuntary over-time.

27 I bring this up because you've, on several
28 occasions, mentioned your son. And you are certainly

1 responsible and proud of the fact that you have a son.

2 And this motion also died. Why didn't you say
3 anything in this instance?

4 MS. BLACK: Senator Hughes, I did say quite a lot
5 specific to that particular issue. I suggested that the issue
6 certainly was a worthy issue. It was an issue that I believe
7 that I supported, although That was the first time that I had
8 seen it, that particular morning. I suggested that this is an
9 issue that the IWC ought to take out to hearing. I supported it
10 in its intent, but I had not had the input --

11 SENATOR HUGHES: But you did not give the motion
12 a second?

13 MS. BLACK: Not to adopt it without investigating
14 it, Senator.

15 SENATOR HUGHES: How long do you have to
16 investigate the fact that if you were a single parent, and if
17 you were not economically well off, and you had no one to take
18 care of your child, no trusted relative or neighbor, that the
19 employer should provide for taking care of this child?

20 I'm just talking plain sense. What is there to
21 think about when your most precious possession is not going to
22 be cared for, and you have to involuntarily work over-time?
23 It's not a decision that you made. It's the decision that your
24 employer made.

25 Now tell me, what is there to think about on
26 that?

27 MS. BLACK: Senator, there's probably many things
28 that one ought to consider under those particular circumstances.

1 I have been a single working parent. I worked
2 under Wage Order Four. I understand the difficulties and the
3 limits on day care.

4 At every step throughout this process, that was
5 of great concern to me.

6 SENATOR HUGHES: But you chose not to move the
7 motion because you wanted them to bring it up several times
8 until other people were on your side, and you had someone else
9 to vote with you on it?

10 MS. BLACK: No, Senator.

11 As I tried to explain, the rules and procedures
12 of the Industrial Welfare Commission, I could not truly accept
13 that amendment without taking it out to further public hearing.
14 It was a substantive amendment to the proposal.

15 We are not like the Legislature, Senator. When
16 there is a substantive change to a proposal that has been held
17 out to public hearing, counsel has advised us that we cannot
18 accept that kind of amendment at that particular point in the
19 game.

20 SENATOR HUGHES: Is this the counsel that's
21 sitting next to you?

22 MS. BLACK: No, it is not. This is private
23 counsel who represents Commissioner Alam. He's not the counsel
24 at the Industrial Welfare Commission.

25 But again, Senator, I submit to you, and it's in
26 the public record, that when this amendment was offered on April
27 11th, I in fact said, I believe that that is something I would
28 support, but it cannot be accepted under the rules and the

1 procedures today, voted on and approved without public
2 hearings. However, I support it. I encouraged it to go out to
3 public hearing.

4 SENATOR HUGHES: Did you say that at the meeting?

5 MS. BLACK: In the public record, Senator.

6 SENATOR HUGHES: In the public record?

7 MS. BLACK: Absolutely.

8 SENATOR HUGHES: Do you plan on bringing it up
9 again at your next meeting?

10 MS. BLACK: I don't believe this body is going to
11 allow me the opportunity.

12 SENATOR BRULTE: Are we going to reject you
13 before the next public meeting? When is the next public meeting?

14 MS. BLACK: I had scheduled, at the conclusion of
15 that hearing, a meeting for, I believe, May 18.

16 Senator, I'm sorry, a follow-up.

17 Immediately after I had set that particular date
18 is then the gentleman entered or approached the Commission with
19 the gun and attempted to fire his weapon, a loaded .38.

20 At that time, staff and the members of the
21 Commission chose not to schedule another public hearing because
22 we had no idea what this individual intended as part of a group.

23 My staff is still very upset and very shook up
24 over that incident. I would suggest to you that many of the
25 members of the Commission as well do not feel comfortable yet at
26 this time, given all the attention.

27 Forgive me, indulge me for just a minute. But
28 the fact that there has been a great deal emotion stirred around

1 this particular issue, it's amazing to me how many times people
2 say, "What are you doing? Why are going to eliminate
3 over-time."

4 Well, we're not suggesting that you eliminate
5 over-time. We're just addressing the way that over-time is
6 calculated.

7 But what has been portrayed to mass numbers of
8 the population is that this Commission is eliminating over-time.
9 Because people have been led to believe that, this particular
10 Commission, I don't believe, feels very comfortable yet in
11 scheduling another hearing.

12 So, I can't tell you. I would assume soon, but as
13 I said, I don't believe this body's probably going to give me
14 the chance to set that date.

15 CHAIRMAN LOCKYER: I note most of the public
16 commentary's been made by the Governor. So, there certainly has
17 been the most visible Californian who regularly in the media
18 explaining his view, which you've adopted, which is eliminating
19 8-hour day over-time.

20 So, that may be confusing, but the one person who
21 gets more press than any other single Californian, with the
22 possible exception of criminal defendants on occasion, which he
23 is certainly not one, has had plenty of opportunity to explain
24 the issue, I think, more so than those on the other side of the
25 issue.

26 Senator Hughes.

27 SENATOR HUGHES: I have several more questions,
28 not only for you, but for the other nominee also, but since we

1 have a long agenda, I just don't feel that I need to go through
2 the stuff at this point.

3 MR. ALAM: Excuse me, Mr. Chairman.

4 Can I answer one of the witnesses who came here?

5 CHAIRMAN LOCKYER: You can respond to anything
6 that was said before, yes, you may.

7 Senator, you're entitled to ask.

8 SENATOR HUGHES: Could you answer the two
9 questions that I just asked Commissioner Black? Why did you not
10 second the motion, and how do you feel about those items?

11 CHAIRMAN LOCKYER: Voluntary and child care.

12 MR. ALAM: As I told before, you know, that the
13 motion was put at the last minute, and I was not aware of that.

14 SENATOR HUGHES: So, someone advised you, you
15 don't vote?

16 MR. ALAM: Nobody advised me, Senator. Excuse
17 me?

18 SENATOR HUGHES: She said that she was advised by
19 counsel that you do not vote on anything that was submitted and
20 the last minute.

21 Is that the feeling that you shared?

22 MR. ALAM: No, no. Nobody advised me of doing
23 anything. I just wanted to see because, for a minute, and then,
24 you know, we didn't know what to do about this. We were talking
25 about those motions.

26 And then, you know, personally I didn't feel, you
27 know, that prior to my consideration and, you know, review of
28 the whole subject, what this motion was about.

1 SENATOR HUGHES: I'm glad you said that, because
2 then evidently this counsel that you had advises Commissioner
3 Black and does not advise you.

4 That seems really confusing to me. I don't
5 understand why they would be prejudicious and advise one
6 Commissioner about a procedure and not advise the other
7 Commissioner, because the counsel is suppose to counsel all of
8 you equally to allow you to make the same decision.

9 Let him answer, please, ma'am.

10 MR. ALAM: The counsel sits by Chairperson Robyn
11 Black. I have no access to --

12 SENATOR HUGHES: So, they talk to her and not to
13 you.

14 MR. ALAM: Yeah, he didn't talk to me.

15 SENATOR HUGHES: That is sexual discrimination.

16 [Laughter.]

17 MR. ALAM: I would think so.

18 SENATOR HUGHES: That really bothers me.

19 MS. BLACK: Senator, may I address? If you don't
20 mind, may I address that.

21 SENATOR HUGHES: No, I don't want to harp on that
22 one issue, because that was not the nature of my question. I
23 want to give him a chance to answer, too.

24 MS. BLACK: I just wanted to respond --

25 SENATOR HUGHES: No, because I want to get back
26 to him. Thank you.

27 The other issue is about the child care. How do
28 you feel about the child care issue? Are you a parent.

1 MR. ALAM: Yes, I have -- I have three kids: two
2 little girls and a boy.

3 SENATOR HUGHES: All right, so you have even more
4 vested than one child.

5 How do you feel about that?

6 MR. ALAM: I am very sympathetic. I feel really
7 bad that, you know, the working women who have -- who are single
8 parents and, you know, have to leave their kids to the child
9 care.

10 But as I said, you know, I don't know how many
11 cases are there. When we are dealing with the masses, I need to
12 see the number of how many people will be affected. There were
13 no statistics produced on this kind of data or anything supporting.

14 I know they are nurses, but how many of them are
15 there and working mothers, and how many of them? I mean, we
16 cannot generalize just because of some typical or particular
17 case and just try to be swayed by the emotions.

18 You know, I know this is a very delicate and
19 very sensitive issue.

20 SENATOR HUGHES: But if it were you, and you were
21 a single parent -- you have what, five children.

22 MR. ALAM: Three.

23 SENATOR HUGHES: Three children.

24 Okay, and you had these three children, and the
25 child care that you had was not available at the time that you
26 had to work involuntary over-time. You might have found other
27 ways of their being cared for, like relatives, or friends.

28 But suppose you were brand-new to this job

1 situation, brand-new to this town that you were working in,
2 Sacramento, what would you do?

3 MR. ALAM: I understand your concern, Senator.
4 It's really a very complex situation.

5 I have not found myself in that situation, but --

6 SENATOR HUGHES: You're lucky.

7 MR. ALAM: But, I mean, I really have -- I don't
8 know how -- if it's involuntarily, yes, it really is a burden on
9 the employee to work over-time without their consent, then her
10 kids, you know, they cannot find a shelter after 5:00 o'clock.

11 These could be cases, and I really have a lot of
12 sympathy with them, but I don't know, you know, how to remedy
13 this.

14 SENATOR HUGHES: Both of you seem to be against
15 the over-time issue to begin with, and there are two bills, and
16 I think Commissioner Black talked several times about
17 Assemblymember Knox.

18 I haven't heard her say anything about the Solis
19 legislation, but both of you know what those pieces of
20 legislation do.

21 How do you feel about them? And do they have
22 merit, because they actually give some other alternative, and
23 that's giving another time to take, maybe, the four hours off a
24 week, and being made up some other time during the week.

25 And why isn't that a feasible idea? And how do
26 you feel?

27 I'll ask you, and then I'll hear.

28 MR. ALAM: Well, I personally think that the

1 Legislature is the body which makes law, and if -- anything
2 which is passed by the Legislature is very acceptable to me, and
3 I think that's the right thing to do.

4 SENATOR HUGHES: Anything that we pass? You like
5 everything that we do up here? Something is really wrong with
6 you.

7 MR. ALAM: Well, I mean, this is a body, I mean,
8 the State Assembly and Senate, they have all the authority to
9 pass law for the majority, and I'm sure, you know, the majority
10 does the right thing when they pass this law. And I have no
11 problem whatsoever with the --

12 SENATOR HUGHES: Majority rules? That's really
13 bad because sometimes the majority understands they make a
14 mistake, so that's why they come back the next year and try to
15 clean up the mistake that they made to begin with.

16 MR. ALAM: Well, I hope they don't give it to IWC
17 back, you know. They can agree to something, and then they'll
18 be another problem.

19 I agree with the, you know, Wally Knox AB 15, I
20 think. And if it passes, I'm very happy. I have no problem
21 with any objection.

22 SENATOR HUGHES: If it passes, but your vote in
23 that committee meeting on the 11th, you feel, would have been
24 endorsement of his bill, and is that why you didn't vote in that
25 instance on that motion as an alternative?

26 MR. ALAM: I don't know if you're talking about
27 the flexible schedule. It ought to be as flexible --

28 SENATOR HUGHES: Yes, I'm talking about the --

1 MR. ALAM: If you provide flexibility, you know,
2 and that's what I think the Californians are looking for, more
3 flex time.

4 SENATOR HUGHES: Why didn't you vote on that
5 measure? Why didn't you second that measure? If you believed
6 that measure had credibility, why didn't you second the measure?

7 MR. ALAM: Well, as I said, you know, this
8 motion, I don't know how it was written.

9 SENATOR HUGHES: You don't know how it was
10 written? It was written so you could read it. Did you read it?
11 Did you understand it?

12 MR. ALAM: Well, the language, you know, sometime
13 is not?

14 SENATOR HUGHES: It was legalese?

15 MR. ALAM: Yes. As I said, I need time. At the
16 eleventh hour to pass a motion, I just cannot go ahead and
17 second it. I'm not even being taken into, you know, I mean,
18 courtesy to tell me before that that's what we're going to do,
19 and that we need your support.

20 I mean, that, I had problem with the labor, they
21 never talked to me. Then, whenever I tried to reach them, here
22 was a guy sitting from PEG who was saying I don't know the name
23 of the president, but I wrote a letter to his president. He had
24 not even the courtesy to answer me. He says he has never seen
25 me, while I had been in their meetings all over. I'm a member
26 of the PEG since 1989, seven or eight years.

27 I was invited, you know, to the Civil Four
28 Section Branch, and I act with those people. And now they are

1 denying.

2 So, what I'm trying to say here, you know, that
3 if they talk to me, if they communicate to me, I will be very,
4 you know --

5 SENATOR HUGHES: If they speak to you in plain
6 English. I don't blame you. I like plain English, too. I
7 don't know like the legalese.

8 But you did fully understand the intent, and you
9 still did not see fit to second that motion, yes or no?

10 MR. ALAM: Well, I really, at this point I would
11 say I needed to see that thing work out before --

12 SENATOR HUGHES: No was the answer. Thank you.
13 Now, Commissioner Black, on the same issue.

14 MS. BLACK: Are you asking me in terms of the
15 Knox and Solis bills, is that the question, or are we going to
16 talk about child care again?

17 SENATOR HUGHES: No. Do you resent talking about
18 child care?

19 MS. BLACK: Absolutely not.

20 SENATOR HUGHES: I don't know why you brought
21 that up. I left that a long time ago. I don't want to go back
22 to it. We have too much to do today.

23 MS. BLACK: I was simply trying to answer the
24 question I thought that you might want me to answer.

25 SENATOR HUGHES: I don't want to go back. I want
26 to go forward.

27 I don't want to harass you. And so, if I
28 continue to ask the same things, and have you continue to try to

1 plead your case, I think that's harassment. So that's why I
2 moved on to another topic.

3 MS. BLACK: We're moving on to the Knox and Solis
4 bills; correct?

5 SENATOR HUGHES: Yes.

6 MS. BLACK: Thank you.

7 I have been engaged in conversations with
8 Assemblyman Knox all a long. He has been very involved in this
9 process, and much to his credit. I have a great deal of respect
10 for Mr. Knox and what it is he believes in and what he fights
11 for.

12 We don't always agree on everything, but I
13 continue to offer to try to work with him, not only on this
14 particular two bills, but on the fact that there is so much that
15 we need to do in terms of child care in this state, so much.
16 And that's a priority with him. It's priority with me.
17 Unfortunately, that wasn't my jurisdiction.

18 SENATOR HUGHES: I'm glad to hear that, thank
19 you.

20 MS. BLACK: But I will continue. I have told
21 Assemblyman Knox that even when I'm know longer a member of this
22 Commission, I will do everything I can to work with him on the
23 language of AB 15.

24 I have not had opportunity to work as much with
25 Senator Solis, but I did stop by and speak with Pat Henning last
26 week, made the same offer to him.

27 There's specific issues in the Solis and the Knox
28 bills that I have concerns with. One of the issues I raised

1 with Mr. Knox is the four-hour makeup time does not address what
2 happens to employees when they need to take an entire eight
3 hours off, if the 8-hour day is to be put into statute in AB
4 15.

5 What happens to the employees who continue to
6 have a day that comes up? Are they still in fact then going to
7 have to miss four hours of work without pay? That's one issue
8 AB 15 that I still have concerns about, the not withstanding
9 language in the legislation.

10 SENATOR HUGHES: This is not a hearing on those
11 two measures.

12 My question was merely about, and I'm glad to
13 hear that you're working with the author, and you're trying to
14 understand it. So, thank you. I have that on the record, thank
15 you very much.

16 SENATOR LEWIS: Ms. Black, at the beginning of
17 your testimony, you talked about how tough, personally, how
18 tough this issue is for you. You mentioned several of the things
19 that had taken place.

20 One that you mentioned was that your phone number
21 was published, your home phone number was published, which
22 resulted in a fair amount of anguish for your family and your 12
23 year old son.

24 Was this just the result of over zealous
25 individuals, or was there any bona fide organization that
26 actually published your phone number?

27 MS. BLACK: I'm sorry that I did not bring that
28 document today, but I actually have the document that published

1 my phone number as well as Commissioner Arnold's and
2 Commissioner Alam's.

3 Unfortunately, the phone number that was
4 published on my behalf was my home phone number. And as I
5 stated, it is the number that sits next to my computer, and my
6 12 year old son had to listen to many of those phone calls.

7 I believe it was sent out actually by the
8 AFL-CIO. It may have been picked up as well by other unions, I
9 believe.

10 SENATOR LEWIS: Have you received an apology for
11 that? Was that an intentional act, to publish your home phone
12 number, or did they accidentally mix up what they thought was
13 your home number and a work number?

14 MS. BLACK: That could have been, Senator. I'm
15 not going to accuse of the intent or allege that anything
16 happened.

17 CHAIRMAN LOCKYER: Is it listed? Is your home
18 number listed?

19 MS. BLACK: Yes, it is. And actually,
20 Mr. Chairman, I have received phone calls on -- I have two phone
21 numbers at home. Both phones have -- it's in the phone book.
22 If someone is determined to also find my phone number, then it
23 is certainly accessible to them.

24 CHAIRMAN LOCKYER: I understand. Well, as
25 someone whose home numbers are also listed, I understand how you
26 get the junk calls on those lines.

27 MS. BLACK: But one was certainly published and
28 put out with the intent to call.

1 SENATOR LEWIS: And given the environment and the
2 hostility, and everything, they went ahead and published your
3 home phone number, presumably wanting people to call you at
4 home.

5 That strikes me as an incredibly terrible thing
6 to do.

7 But I just wanted to you, was there anything else
8 that you wanted to put on the record with regard to the legal
9 counseling issue, or child care, or anything like that?

10 MS. BLACK: Thank you. I'll try to be very
11 brief.

12 There are a few things that I would again like to
13 offer to Senator Hughes.

14 I feel very strongly about the child care issue.
15 I strongly advocate that the IWC put out to hearing the proposal
16 of the amendment that was offered by Commissioner Center. I
17 think it's worthy of pursuit, worthy of investigating, and
18 potentially adopting on behalf of the Commission. I encourage
19 that.

20 In my role as Chair, I do speak to legal counsel
21 on a regular basis. The role of Chair has been more time
22 consuming than I could even begin to describe to you, given all
23 of the events the Commission has had to undertake with five
24 proposals, the number of public hearings.

25 Had anyone told me a year or two ago the amount
26 of time that it would take as Chair in a volunteer position, I
27 wouldn't have done this. I mean, I'm still amazed at the amount
28 of time this has taken to try to do this right.

1 I had to make sure that legal issues were
2 addressed. We had lawsuits filed even the day before the
3 hearing where I had to represent the Commission. I had to speak
4 to legal counsel, independent counsel. It's taken a tremendous
5 amount of time.

6 I had intentionally not talked to other
7 Commissioners because of the state Open Meeting Act about
8 certain issues, or inform them, or how they're going to vote.
9 That's not been something that I've discussed.

10 I have just tried to address the matters as
11 raised to me on a daily basis by staff, by our legal counsel.

12 So, I think there's good reason that there are
13 some things that I know because I'm involved in this every day
14 and have been for months.

15 One of the things I'd like to bring up,
16 Mr. Rankin had mentioned the fact that I spoke at the -- an
17 employers' group. It was IRAC, I believe, was the group that I
18 spoke to, and that was in October of 1996.

19 When I was asked to speak to that group -- I
20 speak to a lot of groups about this issue -- one of reasons that
21 I spoke there, and one of the reasons I engaged in a debate with
22 Mr. Barry Broad was because I thought I could learn something.
23 I, as I said, continued to ask throughout 18 months for labor to
24 sits down, or for those who oppose the plan to sit down and talk
25 with me about it.

26 It's unfortunate that had they done that, and
27 potentially suggested some of these amendments earlier in the
28 process, we may have able to work on those and incorporate them

1 into the final action. I can't incorporate them if I don't have
2 someone sit down and propose them and talk to me about them, and
3 explain what it is they'd like to accomplish so that we could
4 have a mutually beneficial agreement at the end. That's
5 unfortunate. I wish that had, in fact, happened.

6 But it is why I was happy to work with Mr. Broad
7 because I really thought I would learn something.

8 I went to the hearing on AB 15 because I thought
9 I would learn something that would be of value to me as I worked
10 to make a decision on this particular issue.

11 And lastly --

12 SENATOR HUGHES: Did you learn anything? You
13 said that's why you went to the hearing. Did you not learn
14 anything?

15 MS. BLACK: Senator, with all due honesty, I was
16 very frustrated because it was much of the same of what I've
17 experienced without.

18 And I think Assemblyman Knox was equally
19 frustrated, if I may be so bold as to speak for him. That there
20 seems to be polarization of this issue. And it seems like
21 everybody agrees that we want flexibility, but where we can't
22 agree is how do we implement flexibility within the law.

23 It is where I also had the opportunity to speak
24 to Mr. Knox about the issue of primarily. It was brought up
25 that I debated Mr. Broad, hopefully to learn something, but at
26 that time I was also familiar with the issue of primarily.

27 And to suggest that I was not moveable on any of
28 these issues is, in fact, incorrect because, yes, while I did

1 ultimately support the change to the 40-hour work week, I moved
2 against my own proposal on the issue of primarily, which was
3 also at issue at that particular time.

4 So, because I enter into a discussion about the
5 issue does not mean that I'm not capable of learning and
6 changing my mind. Again, I offer the issue of primarily as
7 evidence to that fact.

8 Mr. Rankin also spoke about the issue that we
9 have under current law in some wage orders, the ability to
10 institute a 12-hour day, or, in some cases -- excuse me, a
11 10-hour day, and in some cases the 12-hour day.

12 One of the things -- and I wish I would have
13 brought you some of the letters -- both in the written testimony
14 and the oral testimony throughout the public hearings, one of
15 the problems that was repeatedly submitted to this particular
16 Commission is that when you asked a defined work group, "Do you
17 want alternative scheduling in the course of your work week,"
18 they would all, by and large, 70, 80, 90 percent say, "Yes, we
19 want flexibility in our work week."

20 The problem is, then they all have to agree, this
21 entire group of employees, on the same exact work schedule. It
22 doesn't address the one working parent who wants to take Fridays
23 off to work in her kid's classroom, another individual employee
24 who wants Mondays off to go to school, another one who may want
25 Wednesdays off to take some personal enrichment class or even
26 attend religious functions. It just didn't accommodate that.

27 So, part of the issue that I struggled with was,
28 yes, you can. And Mr. Rankin can tell you that currently

1 employees can vote for this individual flexibility. But it only
2 is true if two-thirds can agree to the exact same schedule. And
3 employees told me, over and over and over again, "I want the
4 flexibility, but we can't all agree on the exact flexibility
5 within that work week that we'd then have to live by for a
6 year." And it doesn't accommodate individuals. It just doesn't
7 accommodate individuals.

8 And again, the last thing that I would say is
9 that throughout this process, yes, I had a preconceived notion
10 about whether I raised this idea or I did not. As a working
11 mother, I loved the idea of having three days off.

12 I work five days a week. I came home this
13 weekend. I spent Saturday, all day, writing an overdue
14 newsletter for a nonprofit organization. I spent Sunday taking
15 care of household chores and errands. I never got a day off,
16 because work five days. I love to volunteer. I love to do
17 other work. And unfortunately, I have to do things around the
18 house.

19 CHAIRMAN LOCKYER: Ms. Black, you mentioned that
20 if an employee who votes to establish flex time, that there's a
21 problem or an obstacle in that they all have to take the flex
22 time. It can't be just some employees.

23 What causes that problem? Is that a law, or is
24 that a regulation of the IWC?

25 MS. BLACK: I would say that, as I understand it,
26 Mr. Chairman, it's the regulation. And when we --

27 CHAIRMAN LOCKYER: That's what I've heard, but
28 I've asked for the IWC to verify that.

1 And it seems to me odd if that's the case, and it
2 seems to be that's the problem, that you don't change that
3 regulation so that more targeted flexibility would be available,
4 rather than a more sweeping take away.

5 Part of the discussion that troubles me is,
6 there's a lot of concern expressed about trying to help
7 employees and provide for greater flexibility. I would assume,
8 since the law necessitates that, that someone would at least
9 give lip service to that thought.

10 But I accept the views from both of you as
11 genuine in that regard. But the obstacle, since they can get
12 flex time now under the current law with the vote of the
13 employees, seems to be your own regulation that then doesn't
14 allow it to be flexible enough so that, even though they vote to
15 have it, they don't all have to do it.

16 And it just seems odd to me that that wasn't one
17 of the regulations discussed.

18 My suggestion is, Ms. Black, that no one really
19 wanted to make the current law work. What they wanted to do was
20 get rid of it.

21 MS. BLACK: I understand and appreciate your
22 position. I don't know that I would necessarily agree with it.

23 I know that all I can submit to you, Senator, is
24 that when I first learned of the issue, I naturally embraced the
25 issue. My effort during the course of the next 18 months was
26 not to convince myself any further that this was wonderful.

27 The job that I saw that was the greatest
28 challenge to me was to sit down at the table with those who

1 disagreed or had concerns with the issue and work with those
2 individuals. Had someone sat and offered, as you just have,
3 those suggestions, or said let's sit down and look at these
4 regulations, and this is why in fact this doesn't work, then
5 perhaps -- perhaps there would have been a different outcome.

6 CHAIRMAN LOCKYER: I understand. Maybe it's not
7 your responsibility as lay people to think of all these things,
8 that somebody who is framing the issue that comes before you
9 ought to have been aware that you solve the problem that you
10 created. Not you personally.

11 I mean, the orders of the Commission make it
12 inflexible when you vote to have flex time, and then, so rather
13 than dealing with that barrier, a much more sweeping solution
14 was offered up.

15 I understand that that may now be an
16 afterthought, that someone could have looked at that regulation,
17 but it does suggest that at least somewhere along the way,
18 people wanted to frame the issue in a way that you were given,
19 perhaps, fewer choices than might have been wise.

20 MS. BLACK: Senator, Mr. Chairman, I understand
21 what you're saying. I can't say that I even disagree with what
22 you're saying.

23 I think that the greatest frustration, as I've
24 said all along, the polarization that in fact happens and occurs
25 around this particular issue.

26 The only thing that I can tell you as far as what
27 I looked at specifically, and that carried a great deal of
28 credibility with me, was, I should have been -- it should have

1 been easy to have determined in 47 other states that this was
2 not working. There should have been evidence that there were
3 violations, that employees were unhappy, that there was
4 unemployment, less wages earned. That evidence should have been
5 clear.

6 What I found in looking at the issue, and looking
7 at 47 different states is, it appeared to be working very
8 well. Why reinvent a mouse trap that seems to be working very
9 well in 47 other states?

10 That was just a basic struggle that I probably
11 see led to this proposal being put out, because why reinvent
12 something that is working very well?

13 CHAIRMAN LOCKYER: We hear that argument
14 regularly, and I understand that it has a certain persuasive
15 quality.

16 SENATOR BRULTE: Senator, I know you're just
17 about ready to vote. I wanted to follow up just for the record.

18 You said you debated Mr. Broad because you wanted
19 to learn something from him? I just want to know, did you learn
20 anything from him. And if the answer is no, I'd like to ask the
21 rest of the audience.

22 MS. BLACK: Senator, with all due respect, you're
23 putting me on the spot here.

24 SENATOR BRULTE: It's all right.

25 CHAIRMAN LOCKYER: You've been doing fine.

26 Let me make sure, just sort of in conclusion, if
27 you heard any comment this afternoon that you wish to explain or
28 rebut, either of you, please do now.

1 MR. ALAM: I would like to address Mr. Rankin.

2 I have great respect for him. He came here to
3 testify against me. Just I want to put the record straight
4 about the minimum wage.

5 When I came on board, the minimum wage issue had
6 already been kind of resolved. They had, I think, voted. They
7 had conducted the wage orders for that. I had nothing to do
8 with the minimum wage.

9 And then the members, one of the labor members
10 had resigned, and there were only three members left. And then
11 Proposition 210 was passed for the -- you know, to increasing
12 the minimum wage to five dollars that the Commission adopted.

13 So I, you know, his allegation that I did not
14 raise the minimum wage is not correct because I was not part of
15 it at that time. It had already been taken care of.

16 Second thing, wage boards, he said that he did
17 not agree with me for the wage boards. Well, the thing is, you
18 know, they had put me against the wall there. It should be
19 their way or there's no other way. I mean, there was no
20 possibility of any compromise or negotiation.

21 So, okay, I understand that, their point of view,
22 very rigid. They don't want to negotiate.

23 When we selected the wage board, he had all the
24 freedom not to go attend those wage boards, but he went in all
25 five wage boards, attended the meetings. So, I mean, he went of
26 his free will. So, I mean, that does not count, that he did not
27 like to have those wage boards conducted.

28 And then about the loss of over-time, one billion

1 dollar, there was no substantiation to that, I repeat. And, you
2 know, we have different figures, 175 million, 833 million, and
3 now it is 1 billion dollar.

4 So, I just wanted to make this record straight.
5 Thank you.

6 CHAIRMAN LOCKYER: All right, thank you, sir.

7 Any other questions or comments?

8 I wanted to just make a couple of comments of my
9 own prior to asking for a motion or making one, whichever would
10 be appropriate.

11 I've tried, Ms. Black, to look at injury
12 statistics. It's sort of hard to compare, and I guess, even
13 though it's a worn-out comment of comparing apples and oranges,
14 I guess maybe Senator Brulte got to it when he mentioned that
15 there's sort of different injuries counted in different states,
16 or different reliability factors associated with the statistics.

17 But at least with respect to fatalities,
18 California is 20th of the 50 states, so kind of in the middle.
19 And there are states higher and lower than us that are both
20 industrial and rural, and so on.

21 I don't know what to conclude from that, other
22 than perhaps what you did indicate, that there at least wasn't
23 any compelling evidence that you saw that there was a relevant
24 health or safety factor to be considered in this particular
25 context. Maybe there are some other statistics somewhere that I
26 should look at.

27 I intend to vote no on the confirmations, but I
28 do want to say to you both, first, it's very hard to turn people

1 down. You know, it's a real human being. It's not voting on a
2 slogan or a theory, or something like that, and it's difficult
3 to do, frankly.

4 And you both are intelligent, engaging people who
5 had good intentions, and have donated a significant amount of
6 time to state volunteer service. And we owe you thanks for
7 that, and also apologies that you had to endure some of the
8 hardships and threats that you've mentioned. I think those are
9 reprehensible, and it may be those of us that get a little more
10 accustomed to that because in this type of work, you get
11 hardened to that. But I think it's terrible and unforgiveable
12 that you be treated in those ways.

13 With respect to the issue, my views are these.
14 First, that I think the Commission exceeded the statutory
15 authority with respect to 8-hour days. I find the Legislative
16 Counsel's opinion persuasive. I don't know who this Joe Ayala
17 is, but I know he's not related to him. But he's the person had
18 in Leg. Counsel that wrote a lengthy but pretty clear opinion
19 that the Commission does not have the authority, in the absence
20 of further legislation, to amend existing wage and hour orders
21 on over-time. So, that would be sort of the first concern for
22 me.

23 The second is, tilting away from the statutory
24 purpose, and I think you understand it and know what it is,
25 which is basically a pro-employee tilt to the Commission's
26 responsibilities, to look after the general welfare of
27 employees.

28 The Hoover Institute study I find, as did

1 Mr. McCarthy, methodologically flawed and worthy of disregard.

2 Then, just as a matter of philosophy, it's my
3 view that in a mature economy, it is better to have employers
4 and employees work out these kind of things themselves, rather
5 than have unilateral take-aways, and most especially
6 disregarding the current rule that employees get to vote on
7 these matters, I think, is a bad direction to go.

8 Finally, that when there were bills offered, and
9 there are bills under consideration, that we build more
10 flexibility into the current law. To not embrace those, I
11 think, is suggestive of an all-or-nothing approach.

12 Mr. Alam has an additional burden, I think, of
13 being appointed to a labor representative slot. And I think
14 that criticism is more appropriate than someone who is in an
15 employer slot, which is where one would expect there would be a
16 tilt to that point of view.

17 We have the problem of operating in a state where
18 the Governor has extraordinary authority, more than governors do
19 in most of the states. And one of the few ways we're able to
20 indicate a different philosophy is with respect to the
21 confirmation process.

22 So, in many ways, I hope you will understand that
23 a vote today is not meant to reflect on the conscientiousness or
24 seriousness with which you have undertaken these jobs, but
25 rather in more ways respective of our general philosophy and the
26 points that I've made.

27 But thank you both, and we appreciate your
28 willingness to come. I'm certainly going to suggest to the

1 Governor's Office that these are both worthy people who ought to
2 be involved, if they have continuing time or interest, in
3 government, and that he ought to find the more appropriate
4 position that would be better suited for you both.

5 Having said that, if I can offer a motion, I'd
6 move that we take them separately. Send Mr. Alam's nomination
7 to the Senator Floor with the recommendation that we not
8 confirm. So that those that would wish to confirm should vote
9 no on that motion, and those that would not confirm should vote
10 yes on that motion. Sorry, it's kind of backwards, but that's
11 the way we have to get it out. We have to get it out to the
12 Floor, is the point.

13 Any questions, comments? Ready to vote.

14 Call the roll on the motion to send to the Floor
15 a recommendation that we not confirm. Yes is for not
16 confirming.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala Aye. Senator Brulte.

20 SENATOR BRULTE: No.

21 SECRETARY WEBB: Brulte No. Senator Hughes.

22 SENATOR HUGHES: Aye.

23 SECRETARY WEBB: Hughes Aye. Senator Lewis.

24 SENATOR LEWIS: No.

25 SECRETARY WEBB: Lewis No. Senator Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Lockyer Aye. Three to two.

28 CHAIRMAN LOCKYER: I'd make a similar motion, or

1 ask that we substitute the roll, if that's agreeable, on
2 Ms. Black, and that would be the order if there's no objection.

3 Thank you for a difficult and long hearing.

4 MS. BLACK: Mr. Chairman, thank you. I
5 appreciate all the time that you've allowed us today, and I
6 appreciate as well the roll that all of you serve in government
7 very much. Thank you.

8 MR. ALAM: Thank you.

9 CHAIRMAN LOCKYER: I think we need a five-minute
10 break for our reporter, if no one else. So, we'll take five
11 minutes.

12 [Thereupon a brief recess was taken.]

13 CHAIRMAN LOCKYER: Good afternoon.

14 I think we're going to have two opportunities to
15 talk to Mr. Alarcon. Partly, there are Members who still want
16 to talk to people, and review the record, and think about it a
17 little, and ask questions at some subsequent hearing.

18 But we have some time with our date here, May
19 14th, so we have a couple of weeks at least.

20 But I thought what we'd do, since there are some
21 who've traveled and taken time off, we want to make sure that we
22 get their comments on the record.

23 Please, ahead and start, if you want to begin in
24 any way.

25 MR. SEARCY: Frank R. Searcy, S-e-a-r-c-y,
26 President of the Chicano Correctional Workers Association.

27 Senator, Chairman and Committee, thank you very
28 much for this opportunity and for adjusting your hearing to

1 accommodate us.

2 I am here to offer our support to Mr. Alarcon.
3 We find that he is very capable of the position that he has been
4 nominated for.

5 With that, I again wish that you would really
6 consider his confirmation for Director. Thank you.

7 CHAIRMAN LOCKYER: Okay.

8 MR. STARR: My name's Terrence Starr. I'm the
9 Chief Probation Officer in Contra Costa County. I'm also a
10 member of the Board of Corrections, so I've worked with
11 Mr. Alarcon over a number of years.

12 He's always been really cooperative with us in
13 trying to get things that were mutually beneficial to the state
14 and the counties done.

15 I'm really concerned, because I would also like
16 to see the Youth Authority in the hands of somebody who has been
17 there, who knows the Youth Authority, and who can bring some
18 continuity to things. I think it's really important now, as I
19 think everybody here knows, we're going into a really strange
20 time, and there are lots of things that have changed just in the
21 last year. And I think we're going to have to have a lot more
22 cooperation between counties and state, particularly Youth
23 Authority.

24 So, I hope that you will confirm him. I think
25 he's a good man for it.

26 I would be happy to answer any questions.

27 CHAIRMAN LOCKYER: I don't know that we'll have
28 them today, but they will be coming.

1 MR. CLARKE: Good afternoon, Senator and Members
2 of the Rules Committee. I'm Alan Clarke, and I represent the
3 Chief Probation Officers Association.

4 In addition to what Mr. Starr has said, we
5 support Mr. Alarcon and urge your confirmation of his
6 appointment as Director.

7 I think, Senator, you know because of your
8 concern for juvenile justice and the number of juvenile bills,
9 there's probably no more important agency to Probation than the
10 Department of Youth Authority. Having a Director with his
11 experience, and my years representing the Probation Department
12 is close to 17 years now, I've had an opportunity to work with a
13 number of directors, and he certainly fills the bill as
14 certainly one of the best.

15 We hope that you will vote to confirm him and are
16 pleased to be here to urge our Association's support for his
17 nomination as Director.

18 CHAIRMAN LOCKYER: Thank you.

19 MAYOR WOLK: Good afternoon, Senators. My name
20 Lois Wolk, and I am the Mayor of the City of Davis, the city in
21 which Frank lives.

22 I know that you will hear much about his
23 professional qualifications, but I am here to speak about his
24 personal commitment to the issues of youth and youth in trouble
25 in our society. And I want to tell you a bit about his
26 community service in this area.

27 Following the violent death of a junior high
28 school student, we formed a Youth Crime Prevention Task Force,

1 and Frank volunteered his time, and his efforts, and his
2 knowledge to be a part of this commission. He volunteered. His
3 arm wasn't twisted, and the commission and the Task Force
4 definitely benefitted from his expertise, his knowledge, and his
5 compassion. He helped us to advocate for the joint school-city
6 efforts in the area of youth crime prevention that were
7 necessary following the report, and he's also one of our best
8 soccer coaches.

9 So, I really encourage you to confirm his
10 position. Thank you.

11 MS. JONES-LONGMIRE: Hello. My name is Darlene
12 Jones-Longmire. I'm the Chairperson for the Sacramento area
13 Association for Black Correctional Workers.

14 And we'd like to support or show our support for
15 Mr. Alarcon for confirmation. He's done a good job, and we
16 feel that he'll be a benefit to the Youth Authority.

17 Thank you.

18 CHAIRMAN LOCKYER: Thank you.

19 MR. KOLENDER: Mr. Chairman, Members of the
20 Committee, I am Bill Kolender. I'm the Sheriff of San Diego
21 County, and I have been such for a little over two years. Prior
22 to that, I was the Director of the California Youth Authority.
23 Prior to that, I was the Chief of Police of San Diego for 13
24 years.

25 I am here to wholeheartedly support the
26 confirmation of Frank Alarcon. I think he is an outstanding
27 choice. When he worked for me, as I was Director of the Youth
28 Authority, I thought that he not only did an outstanding job,

1 but he prepared himself for the position that I hope you confirm
2 him for.

3 He proved himself to be a very capable Deputy
4 Director. He is an outstanding professional with very high
5 integrity and a true commitment to resocializing the youthful
6 offenders that are sentenced to the CYA. He is not only
7 respected by members of the Department, but he is respected by
8 many people throughout this nation in the area of juvenile
9 justice, and he enjoys the support of many persons from
10 different constituencies who deal with our juvenile justice
11 population.

12 His leadership ability is outstanding. He has
13 tremendous skills as a consensus builder, and has proven to be
14 invaluable not only to the Youth Authority, but to the State of
15 California as well.

16 I can attest to the fact that the job of the
17 Youth Authority is not an easy one. It is not simple. One only
18 has to take a look at the current juvenile crime statistics to
19 realize the enormous task that someone faces who leads this
20 organization. These young people are the failures of every city
21 and county in our state, and the Youth Authority is their last
22 hurrah, as you know.

23 I'm here to let this Committee know that Frank,
24 through his years of hard work, his dedication, his passion, and
25 his high integrity, I think he will be an outstanding leader to
26 lead the CYA Into the 21st Century.

27 CHAIRMAN LOCKYER: Sheriff, it's an unfair
28 question. Does he do a better job than you did?

1 [Laughter.]

2 CHAIRMAN LOCKYER: You don't need to answer.
3 That's okay. It's very nice to see you again.

4 MR. KOLENDER: They will probably say yes, I
5 don't know.

6 MR. LANE: Honorable Chairperson, it's nice to
7 see you again, and to the rest of the Members of the Committee,
8 my name is Regis Lane, Executive Director of Minorities in Law
9 Enforcement. We're represented by the Correctional Peace
10 Officers Association, the Latino Peace Officers Association, the
11 Mexican-American Correctional Association, and 100 Black Men of
12 L.A.

13 I would just like to say on behalf of Frank
14 Alarcon that I think he's an excellent candidate to remain the
15 Director and be confirmed by this Committee. I say that not
16 only because of his ability to do the job while he's been acting
17 Director for so many years, and now the Director being appointed
18 by the Governor. I say that because he's also committed and has
19 an unabashed commitment to children in the community.

20 We put on a California Children Policy Summit
21 with the Childrens Advocates Round Table in October. It was
22 three days of a lot of grueling work. Mr. Alarcon was there
23 every day. And that's something that is unique, particularly
24 with the Director and his responsibilities, that he found the
25 time to do those type of things, and finds the time to be
26 committed to those types of issues. And he continues to be
27 committed to those types of issues.

28 So, on behalf of the Minorities in Law

1 Enforcement, I would like to ask for your most favorable
2 consideration for Frank Alarcon as Director of Youth Authority.

3 Thank you.

4 CHAIRMAN LOCKYER: Thank you.

5 MS. KATZ: Hi, Emily Katz with California
6 Emergency Foodlink. We're a statewide distributor of emergency
7 food, and we provide job training both here and in Southern
8 California.

9 And Mr. Alarcon has proven to be a great leader
10 in the benefits of community volunteer work among parolees as
11 well as rehabilitative job training. Our agency and the
12 communities that we serve have benefitted greatly from this,
13 both during disasters, when they bring not only the regular team
14 of parolees who volunteer all year long, but kids from the boot
15 camp and from other facilities to put in an extra
16 around-the-clock effort to help bag food and get it out to
17 communities.

18 In addition to that --

19 CHAIRMAN LOCKYER: Are they exempt from 8-hour
20 day? I think they are.

21 MS. KATZ: You may need to address that to
22 somebody else.

23 In addition to that, the parolees very proven one
24 of the cornerstones of our job training program that benefits
25 both parolees, homeless people, and people in the welfare to
26 work transition. And many of the parolees who entered our
27 program as beginning trainees have worked their way up to
28 management positions and are now coaching other people through

1 that work training program.

2 So, we appreciate his support tremendously. We
3 can see the benefit that it's given to youthful offenders who
4 have shown a very low recidivism rate in our program, and who
5 have provided the great benefit of food assistance and
6 volunteerism.

7 Thank you.

8 MR. THOMPSON: Mr. Chair and Members, Jeff
9 Thompson, representing the California Correctional Peace
10 Officers Association, those peace officers employed by the
11 California Youth Authority.

12 Mr. Alarcon has the helm of this Department
13 through fairly difficult times. As you are well aware, we've
14 lost one of our officers last August at the Youth Training
15 School in Chino. All the eyes have been watching Mr. Alarcon's
16 response to the evident need to improve staff safety, and
17 related to that, just the general morale that coincides with
18 whether or not the top man is in gear in dealing with those
19 safety concerns.

20 Our Association's 13 chapters and the Youth
21 Authority met and has had discussions with Mr. Alarcon. And
22 given the communication, which is the man's forte, with that
23 line staff, they are pleased to provide a vote of confidence in
24 him to handle the helm of the CYA during these times.

25 We think, given the bulge in demographics of the
26 young criminal coming up through the courts over the next few
27 years, the challenges to YA are going to be numerous. We think
28 the man has the experience, certainly the commitment to his

1 staff, to adequately address their safety needs.

2 For those reasons, we do look forward to working
3 positively with the gentlemen, and we'll be hoping that your
4 Committee urges confirmation of his appointment.

5 CHAIRMAN LOCKYER: Thank you.

6 MR. CEBALLOS: Hello, Senator. My name is Robert
7 Ceballos. I am here as the spokesman for the Mexican-American
8 Correctional Association, as immediate past President. Also in
9 the room is Rachel Rios, the newly elected Northern California
10 Vice President.

11 We are here to support Mr. Alarcon and his
12 nomination, and we ask that the Committee confirm his
13 appointment. We believe that he is the person for the
14 assignment.

15 He has shown through his experience and the
16 leadership that he has taken upon that he will lead and keep the
17 Youth Authority as one of forerunners in the nation dealing with
18 the juvenile correctional system.

19 Again, we ask the Committee to confirm
20 Mr. Alarcon, and we know that he'll be able to lead the
21 Department in the right direction.

22 Thank you.

23 MR. BROWN: Craig Brown, Director of Finance and
24 former Director of the California Youth Authority.

25 CHAIRMAN LOCKYER: Did he do a better job than
26 you?

27 [Laughter.]

28 MR. BROWN: Yes. I'm not running for anything.

1 [Laughter.]

2 MR. BROWN: I worked with Frank since the early
3 '80s around the Youth Authority. I think he's prepared himself
4 very well for the job, and most importantly, his heart's in it.
5 I believe he'll continue to do the outstanding job he's done for
6 the last 15 so years.

7 CHAIRMAN LOCKYER: Does he realize that he may
8 become Director of Finance?

9 [Laughter.]

10 CHAIRMAN LOCKYER: Have you warned him? Read him
11 his rights?

12 MR. BROWN: Any time.

13 SENATOR BRULTE: If he's so good, how come you
14 haven't brought him to Finance with you?

15 MR. BROWN: Governor's appointment.

16 MR. WARE: Mr. Chairman and Members, my name is
17 Jim Ware. I'm a retired special consultant.

18 I represent a team that has been going to all the
19 various institutions. Just last week, we went into
20 Mr. Alarcon's institution at Stockton. We started at 12:00
21 o'clock at night, went all night long, all day the next day.
22 And we found a lot of high professional, highly morale people.

23 And we're going to go all the institutions, but
24 I'm happy to say that he's doing --

25 CHAIRMAN LOCKYER: What's this group you're doing
26 this with?

27 MR. WARE: I'm doing it -- it's a group out of
28 CDC appointed by Mr. Gomez. We've been going to all of the CDC

1 facilities.

2 CHAIRMAN LOCKYER: Are you CDC employees?

3 MR. WARE: I'm a retired CDC employee.

4 CHAIRMAN LOCKYER: Are they all in the group?

5 MR. WARE: There are five of us. Some retired,
6 some that are not.

7 CHAIRMAN LOCKYER: Good.

8 MR. WARE: But we're checking with everybody, all
9 staff.

10 CHAIRMAN LOCKYER: Thank you.

11 MR. ALLEN: Mr. Chairman and Members of the
12 Committee, Ward Allen with the Teamsters.

13 We fully support the confirmation of Frank
14 Alarcon. One of the things that distinguishes, I think, a great
15 leader is the willingness to get into different things.

16 When we went to Frank and his supervisors and
17 said, "Look, we'd like to do some job training. We'd like to it
18 out at the Foodlink, and we'd like to have your folks involved."
19 Let me tell you, they were overjoyed.

20 We are looking, and we hope to be able to put
21 hundreds of CYA wards through training and to work. We're going
22 to do it in Northern California; we're going to do it in
23 Southern California as well. We think it's very important.

24 Frank has been a real leader, and his people have
25 been enthusiastic supporters. And I can tell you, that kind of
26 support comes right from the top. It doesn't go from the bottom
27 up.

28 We recommend that you confirm him. Thank you.

1 CHAIRMAN LOCKYER: Thank you.

2 Anyone else that wishes to comment now? Is there
3 opposition present?

4 I note that we've received letters of opposition,
5 so for the record, I'll just mention that.

6 Yes, sir.

7 MR. MARIANO: Mr. Chairman, my comments are a
8 little bit more lengthy. If I could just have equal time with
9 all the previous speakers, I'd appreciate it.

10 CHAIRMAN LOCKYER: Go ahead.

11 MR. MARIANO: My name is Silas Mariano. I'm the
12 Business Administrator at the Heman G. Stark Youth Training
13 School in Chino. That's the Youth Authority facility. I'll
14 refer to it as YTS.

15 I've been working for the Youth Authority for
16 nearly 27 years; 22 years as a supervisor and manager. At this
17 time, I'm the number three person at the YTS in Chino.

18 I've also worked at numerous locations throughout
19 the Youth Authority in both Northern and Southern California.

20 I worked five years directly with Mr. Alarcon.

21 I've also worked for a number of years as a
22 consultant around the country to different correctional
23 agencies. My areas of expertise are emergency preparedness,
24 crisis intervention, and supervisory practices.

25 I also need to tell you, I'm what a lot of people
26 would refer to as a disgruntled employee.

27 CHAIRMAN LOCKYER: We call them whistle blowers.

28 MR. MARIANO: I guess that's maybe a little

1 better, I don't know.

2 I believe, although, that I have that reputation,
3 I also have a reputation for integrity, and I have a reputation
4 of being dedicated to the mission of the Youth Authority.

5 I'm hear today to speak in opposition to
6 Mr. Alarcon's confirmation.

7 I've known Mr. Alarcon for, professionally and
8 personally, since he came to the YA. I think that was over 12
9 years ago. He promoted me to two management positions, and I've
10 socialized with him, although I'm not implying that those are
11 related issues.

12 I believe him to be personable, visionary,
13 articulate, energetic and committed. I can co-sign many of the
14 things that the previous people have said. I know he's also
15 very experienced in governmental service. I think I could add
16 that on the positive side of the ledger.

17 However, based upon actual performance of policy,
18 operations and security in the Youth Authority, where he has
19 been either the Chief Deputy Director or the Director off and on
20 for nearly nine years, I believe him to be responsible, if not
21 personally, ultimately, for gross negligence, unethical
22 behavior, and not accepting responsibility for major problems in
23 the Department.

24 The letter I distributed itemizes these problems
25 and situations, although I'd like to add a few comments as I
26 highlight the letter about security issues. After I highlight
27 the problems, I believe you'll understand why he should not be
28 confirmed.

1 I have first-hand knowledge of many of these
2 problems. I have offered to provide the names of additional
3 witnesses to the staff if necessary. I have documentation of
4 some of the incidents, since I was directly involved in the
5 incidents, and I am willing take a polygraph on any testimony
6 regarding incidents which I directly observed or participated
7 in. So, if I might just highlight the issues in the letter.

8 The first area is Attempted Murder Incident
9 Review. This happened in 1991 at our facility in Stockton.

10 Briefly, an employee was raped, strangled and
11 beaten. The ward who did this actually yelled at her, "How come
12 you're not dead yet?" So, to characterize it as attempted
13 murder, I think, may even be an understatement. He got nervous
14 and left.

15 The investigation was terminated by Mr. Ed
16 Wilder, who's currently the acting Deputy Director. He made the
17 following statement to the investigator: "Why are you making so
18 many good people look bad?"

19 He ordered the investigator to write a summary of
20 what had occurred on the investigation to date, and did not
21 forward the summary to the Director -- to the Chief Deputy
22 Director, Mr. Alarcon, who initiated the investigation.

23 When the investigator asked Mr. Alarcon how he
24 liked the investigation report, Mr. Alarcon told him that he
25 hadn't seen it. He only saw the one-page -- he had seen a
26 one-page summary from Mr. Wilder. I informed him that the
27 summary was actually six pages, and it had my signature on it
28 because I was the investigator.

1 Mr. Alarcon asked me to FAX the report to him,
2 which I did. Shortly thereafter, I was told that I was
3 inappropriate to be a manager in institutions. I was returned
4 to my lower paying position in Central Office.

5 Mr. Alarcon did not instruct me to finish the
6 investigation, nor do I have any information that the
7 investigation was completed.

8 And worst of all, I can say that no action was
9 taken against Mr. Wilder because of this unethical decision.
10 And probably the worst part of it is, there was an incident six
11 months later where an employee was hit over the head with a
12 pipe. And if the report, if my report --

13 CHAIRMAN LOCKYER: I assume it was by a ward
14 also?

15 MR. MARIANO: By a ward, yes.

16 If my report had been distributed, and if there
17 had been some systematic way of making changes, some of the
18 issues -- I know for a fact that some of the issues in the
19 hitting over the head by the pipe were similar to the ones in
20 the rape. So, the corrections might have been made that could
21 have prevented the second incident.

22 Many of you have heard about the issues at YTS
23 surrounding the employee's murder. There's been a Senate
24 hearing on it.

25 The incident review report, which I had the
26 opportunity to review, focused primarily on the logistics and
27 chronology of how the incident occurred. Very few management
28 issues were mentioned. For instance, let me give you a couple

1 of examples of policies which Mr. Alarcon was responsible for.

2 Last summer, the Governor signed legislation
3 requiring most of the M numbers inmates held in the Department
4 of the Youth Authority to be transferred back to the Department
5 of Corrections. The Department was unable and unprepared to
6 implement the operations necessary to transfer those M numbers
7 quickly as soon as the legislation took effect.

8 At Youth Training School, the staff found out
9 about it before management came to work in the morning and could
10 deal with it, because it was announced over the radio on a news
11 program. We were unprepared to deal with those M numbers. The
12 Superintendent, Mr. Vander Weide, quickly took action to place
13 those wards on temporary detention, which means lock-down.

14 In the past, any inmate in the Youth Authority
15 who it was decided was going to go to Corrections was placed on
16 lock-down.

17 Two days later, Mr. Barnett, then acting Chief
18 Deputy Director, called Mr. Vander Weide -- this is according to
19 Mr. Vander Weide -- and instructed him to do a modified
20 lock-down, which would place 462 M numbers at YTS out in the
21 living unit programming. Now, not all on the same living unit,
22 in smaller groups, under control of staff, as would be a normal
23 program.

24 However, since these people are considered very
25 dangerous, they should have been kept on temporary detention.

26 I believe this reflects the lack of judgment in
27 Headquarters about how to handle serious problems and
28 situations. And in fact, one of those inmates actually killed

1 a staff member.

2 It's my personal belief that that person should
3 have been locked down in his room at the time and not a member
4 of the clean-up crew.

5 And the responsibility for how to handle those M
6 numbers after the legislation was signed by the Governor rests
7 in the Director's office.

8 We had a previous situation at YTS where three
9 inmates were told they were going to Corrections, and a middle
10 manager let them off lock-down and put them on more of an open
11 program status. Those three inmates stabbed two other inmates.

12 When I informed the Director about this, after
13 the Superintendent told me nothing was going to be done to the
14 middle manager because of his negligence -- I did it through
15 E-mail, and I did it through subsequent letters that I have
16 written about other issues -- nothing was ever done to that
17 middle manager because of his gross negligence which resulted in
18 two inmates being stabbed.

19 There are other issues about YTS and the cleanup
20 of YTS, but my general comment is, if Mr. Vander Weide, the
21 Superintendent, and Ms. Shaw, the Deputy Superintendent, are
22 being removed, and I believe this is a quote, "because they are
23 highly ineffective," and if the Deputy Director actually retired
24 when he was told there were no positions left for him in the
25 Youth Authority, what is the appropriate action for the
26 Director, and now the new acting Deputy Director, people who put
27 systems in place and people who approve the appointment of
28 managers which they are now determining are incompetent and need

1 to be moved?

2 My personal belief and the belief of many people
3 in the Youth Authority is, responsibility should go all the way
4 to the top. If it's inappropriate for that Superintendent to
5 remain in position, it's inappropriate more so for the Director
6 to remain in position.

7 One system I'll give you an example of is the
8 entry system for accounting for staff. Because of over-time
9 requirements, the Department believed that you couldn't account
10 for people at the front door because they would have to walk
11 over to the living units on the clock. That could create an
12 over-time situation because the staff shifts would have to
13 overlap.

14 Anybody in the United States that's running a
15 prison knows you have the responsibility, as a manager of that
16 prison or of that prison system, to account for people going on
17 and off grounds.

18 Yet, the Director's office instructed the
19 institutions to put in place a system where we could not
20 actually say whether somebody was on grounds or not. And in
21 this case, after the employee was murdered, if we had a system
22 in place, we may have been able to locate her within two hours,
23 say, of the end of her shift.

24 This resulted in two days of staff searching
25 through a dump site. Forty-five hours later, her body was
26 found, because of a system put in place by Headquarters.

27 I have a section here on sexual harassment that
28 I'm not a direct witness to. These are perceptions of many

1 people inside the Department. I don't have direct information
2 about these.

3 The general perception is, we got a letter last
4 year, I think it was signed by Director Brown, basically laying
5 the law down on sexual harassment. Each Director, really, in
6 the Youth Authority puts out a similar letter, emphasizing their
7 support for preventing and responding to sexual harassment.

8 But the perception is that right now, we're under
9 the instruction that if a supervisor does something wrong, and
10 it's determined by the Department as wrong, they won't even
11 represent the supervisor, which, I think, is debatable whether
12 we should or not. But the perception is, you can work in the
13 Director's office and have a history of this kind of thing, and
14 it's okay.

15 The nepotism issues, we have people at a higher
16 level in the Department who have promoted and given special
17 assignments to relatives, while people at the first line
18 supervisory level and at the management level in the
19 institutions are involuntarily transferred or, in some cases,
20 just told they can't take a promotion if they're going to work
21 in the same section as a relative.

22 Again, I think that's a double standard.
23 Mr. Alarcon was informed by me in these examples in March of
24 1997.

25 I'd like to jump to the security issues, and then
26 I'll close my comments.

27 In the area of institution security, Mr. Alarcon
28 has left us unsafe and unprepared. Seven of our eleven

1 superintendents, all who have been appointed during his watch
2 either by his decision or by his strong recommendation as Chief
3 Deputy Director, have little or no security knowledge or
4 experience. Persons have been promoted to Chiefs of Security
5 with little experience, little security experience. Persons are
6 promoted to Watch Commander, which is a lieutenant in our
7 Department, other than on the basis of competency and
8 experience.

9 There is no specialized training for control room
10 staff, which is the heart of the institution for communications,
11 especially in emergencies, or watch commanders.

12 A fire arms policy was implemented which sends a
13 pair of officers into the community. One of them is armed, and
14 one of them is unarmed. Can you imagine sending two police
15 officers out on similar duty? We have been subject to ridicule
16 in the Department when other agencies became familiar with our
17 policy. Plus, the policy is inherently dangerous.

18 Security audits have been conducted annually but
19 only by mail. The institution sends a memo and says, "We
20 reviewed our security practices, and we're in compliance with
21 the manual."

22 These problems continued, despite one murder, one
23 attempted murder, escapes, numerous stabbings, group
24 disturbances, and two hostage situations since 1990.

25 Recommendations have been made repeatedly to Mr.
26 Alarcon and Mr. Wilder to bring the Department up to national
27 standards for emergency preparedness, but they have done
28 nothing.

1 Over a year ago, a committee was formed. I think
2 it was while Director Brown was in office, was in the Director's
3 position. Over a year ago a committee was formed to look into
4 the issue, but nothing has been done to date.

5 Recently, the Director initiated an operations
6 review process. This may or may not improve security. He is
7 responsible, however, for the current situation for the last
8 number of years. So, we can look to the future and say this
9 might have potential, but my statement is that he's responsible
10 for the problems that we're having now.

11 I ask you to consider the impact of a yes vote on
12 public, staff, and ward safety, and to hold Mr. Alarcon
13 responsible, as he's held those under him responsible, and I ask
14 you to vote no on his confirmation.

15 Thank you. Do you have any questions?

16 SENATOR AYALA: I have some questions.

17 You indicated that all the superintendents have
18 been appointed by Mr. Alarcon?

19 MR. MARIANO: I believe they've all made
20 superintendent while he was either Director or Chief Deputy
21 Director.

22 My understanding of the process, having worked
23 near the Director's office and been in it, Mr. Alarcon as Chief
24 Deputy Director had a lot of influence with both Directors
25 Brown, Kolender, and I believe even Trujillo.

26 But I think most of them have been appointed to
27 superintendent jobs in the last seven years.

28 SENATOR AYALA: You're indicating that those

1 people that were under Mr. Alarcon were in office for a number
2 of years, and no improvements were made during that period of
3 time?

4 I first want you to know that I have been
5 familiar with YTS since Lyle Eagan was the Superintendent there,
6 and so, I'm familiar with when they were building the
7 institution, too, so I know what it is.

8 MR. MARIANO: Yes, sir.

9 SENATOR AYALA: I think the problems at YTS are
10 not something that occurred during his watch necessarily, but
11 that occurred under many superintendents and directors before
12 Mr. Alarcon took office.

13 I'm not necessarily saying that he's not
14 responsible for some of these, but what I'm saying is, many of
15 the things that you've indicated, and I've been on top of this
16 for the last six months, since the last murder took place there.
17 I've been meeting daily with people from the Department of
18 Corrections. I have more time spent on these folks that I begin
19 to feel like a warden.

20 But I can tell you that I'm not going to say for
21 a moment that they don't need to be improved, both the YTS and
22 the Department of Corrections. They need improvement, I can
23 tell you that.

24 But I don't think they can say that it all
25 happened in the last few years. They've been at it ever since I
26 can recall. Back in the '60s, I had some arguments with Lyle
27 Eagan about what was taking place.

28 So, it isn't anything new. I just think it's

1 just reached a point where something has to be done, at both the
2 Youth Authority and the Department of Corrections.

3 MR. MARIANO: May I respond to that, Senator?

4 SENATOR AYALA: Sure.

5 MR. MARIANO: I worked at YTS in the '70s. I
6 think I've described it to people as a battle zone when I worked
7 there. Of course, I was a lot younger then and I made it.

8 We have had professional institution management
9 since that time. As a matter of fact, while I was there, we got
10 a very professional superintendent.

11 Mr. Alarcon's been in the Director's office for a
12 number of years now as either Chief Deputy Director, Acting
13 Director, or as Director. And I believe there is a
14 responsibility there. And I've tried to itemize in the letter
15 those things where Central Office is responsible versus the
16 institution.

17 I also believe, by the same standard he
18 established with Mr. Vander Weide and Ms. Shaw, that he, too,
19 should be removed from his position. They were only in the
20 institution six months before the murder occurred, and they're
21 being held responsible for all the operational problems. So, I
22 believe Mr. Alarcon's been around longer than that.

23 SENATOR AYALA: Mr. Vander Weide took office six
24 months ago?

25 MR. MARIANO: It was December of '95, and the
26 murder occurred seven months later.

27 SENATOR AYALA: But he's a product of the system.
28 He started, I remember Mr. Vander Weide when he was a

1 correctional officer, and he moved through the system. And I
2 understand he did a good job in other institutions, Vernalis and
3 where ever he's been, but I have evidence to show he didn't do
4 that good of a job at YTS.

5 I don't know whether the Director or the Deputy
6 Director have to be on top of these men, or women, whatever the
7 case. I know it's difficult to do that, but they have to do it.
8 They're going to have assume that responsibility you're
9 referring to.

10 MR. MARIANO: I agree in part, Senator.

11 When I first got to YTS, again, in February of
12 '95, I was there about three months. I made three approaches to
13 Mr. Alarcon to discuss the problems at YTS. I've highlighted
14 those problems in other letters that I've provided to the staff.

15 Mr. Alarcon had the opportunity, in '95, to do an
16 operations review and clean up YTS, and he failed to do so.

17 So, I believe he does have the knowledge of those
18 previous problems, and he does have responsibility.

19 SENATOR AYALA: Some of those responsibilities
20 and problems have occurred as a result of CCPOA. For instance,
21 everyone taking a key home, which to me was something that I
22 could never understand, as a result of negotiations between the
23 union and the Department.

24 MR. MARIANO: I don't believe that the management
25 of the Department can afford to negotiate or abdicate their
26 responsibility for tracking people's entry into an institution,
27 which is really a prison -- you know the facility in Chino --
28 because they have to go to collective bargaining, or there's a

1 threat of a court case.

2 It's our responsibility to maintain a system
3 where we could track people, which we did the week immediately
4 after the murder occurred. It took a murder for us to meet our
5 responsibility.

6 SENATOR AYALA: You're right. Unfortunately, we
7 did a lot of things there that should have been done a long time
8 before, because I was in the middle of that thing from the
9 beginning, and I toured the facility, and I toured the murder
10 scene.

11 And as someone who's had experience in prisons as
12 a Marine guard, I was shocked that it would happen in a prison,
13 someone could get murdered and no one would miss the individual
14 until the next morning when the husband called to see if she's
15 working over-time. Yet, the car's parked up in the parking lot,
16 and the keys are still in the hole.

17 So, that was shocking to me that that could
18 happen within a prison. The potential for that is always there
19 because of the type of people you have behind bars, and you
20 never turn your back on these people. But I don't understand
21 it.

22 So, I don't know who's responsible for that. I
23 don't know it's necessarily something that occurred in the last
24 six months. This has been going on for quite some time.
25 Finally, I think, the dam broke, and now we're trying to fix it.

26 SENATOR BRULTE: Would you explain for us again
27 what an M case is?

28 MR. MARIANO: I'm not sure I can do all the

1 technical explanation.

2 SENATOR BRULTE: Give me your best.

3 MR. MARIANO: These were offenders sentenced to
4 the Department of Corrections under the age of 25, and they were
5 doing their time in the Youth Authority.

6 Then the law changed. The law change treated
7 them differently based on their expected parole date by a
8 certain age.

9 Basically, I think, at YTS, it resulted in 400 of
10 the -- and these numbers may be off by 20 or so -- 400 of the
11 462 actually being transferred out.

12 SENATOR BRULTE: That were going to be
13 transferred from Youth Authority to CDC?

14 MR. MARIANO: Yes, once the law was signed by the
15 Governor last summer.

16 SENATOR BRULTE: And your contention is that they
17 should have immediately been put into lock-down?

18 MR. MARIANO: Yes, and they were put into
19 lock-down by Mr. Vander Weide when he came to work that morning.

20 My opinion is, the Department was ill prepared,
21 and we were hearing from the wards that the Governor had signed
22 the legislation.

23 SENATOR BRULTE: How many Youth Authority
24 institutions had M cases?

25 MR. MARIANO: I'm unable to answer that.

26 SENATOR BRULTE: I'll have questions for the
27 Director at some point.

28 Are all the M cases currently transferred out to

1 CDC?

2 MR. MARIANO: I believe we have a handful of M
3 cases whose parole date is either before their 21st or 23rd
4 birthday, but I'm not exactly sure of that.

5 SENATOR BRULTE: But your best guess is, most of
6 them have been transferred out of YTS?

7 MR. MARIANO: Oh, yes, yes, a large percentage,
8 over 90 percent.

9 SENATOR BRULTE: Institution wide or just YTS
10 specific?

11 MR. MARIANO: Institution -- YTS wide,
12 institution wide. I don't know the status around the
13 Department.

14 SENATOR BRULTE: Following the murder, you say
15 that Mr. Vander Weide put them all into lock-down.

16 Was that institution wide or just YTS specific?

17 MR. MARIANO: I was in the management meeting
18 when he instructed all the M numbers to be placed on temporary
19 detention, which is a lock-down status. Any time they come out
20 of a room, there's one at a time, maybe two at a time, and extra
21 staff.

22 SENATOR BRULTE: Would you share with me what you
23 meant by the key process? Senator Ayala alluded to it.

24 There was no mechanism whereby there was a
25 tracking of employees?

26 MR. MARIANO: Formerly, before the discussions
27 with the union that Senator Ayala referred to, there was a FLSA,
28 Fair Labor Standards Act issue about over-time. If you turn

1 your keys in at the front door, and then we know you're there by
2 your ID card, or your keys are not there, and you might have to
3 walk 200 yards to go to work.

4 The union's position, I believe, was that you
5 were on the clock while you walked that 200 yards.

6 Well, if one employee gets off at 2:00 P.M., and
7 the other one is on at 2:00 P.M., and they both have to be --
8 you have to have one person in that living unit at a post, you
9 can see that you're going to have 400 yards of time when the
10 employees walk to and from their jobs. So, the Department was
11 no longer tracking people from the front door, and they were
12 paying them from where they were working.

13 Also at YTS, the keys were issued so that
14 employees did not have to stop and check their keys out, which
15 the interpretation at the time, I believe, was, they would
16 actually be on the clock once they picked up their keys.

17 SENATOR BRULTE: So, you couldn't track, you
18 couldn't find --

19 MR. MARIANO: Once we stopped having --

20 SENATOR BRULTE: -- the employee that was
21 murdered?

22 MR. MARIANO: Yes, Senator.

23 Once we stopped picking up keys or turning in ID
24 cards at the front door, we had no way of answering the
25 question, "Do you know whether staff or visitors are on
26 grounds?"

27 SENATOR BRULTE: Is that policy still in
28 existence?

1 MR. MARIANO: No. Immediately after the murder,
2 we provided the staffing necessary to set up a very complex
3 manual ID system up by the front door. And currently, I
4 believe, the Department's planning to do an electronic entry
5 system for a better tracking system that won't be so labor
6 intensive.

7 SENATOR BRULTE: When you say we, is that YTS
8 specific or industry wide?

9 MR. MARIANO: It's my understanding all
10 institutions implemented a similar system.

11 CHAIRMAN LOCKYER: Have you concluded?

12 SENATOR BRULTE: You began by potentially
13 labeling yourself a disgruntled employee, or resisting anyone's
14 attempt to do that, and Senator Lockyer corrected you and said
15 whistle blower.

16 MR. MARIANO: I think I'm both disgruntled and a
17 whistle blower.

18 CHAIRMAN LOCKYER: A disgruntled whistle blower.

19 SENATOR BRULTE: Try to be in the minority party
20 here in Sacramento if you want to be really disgruntled.

21 MR. MARIANO: I think I know what that feels
22 like.

23 SENATOR BRULTE: If we were to look -- I have to
24 take your word for this, I assume -- if we were to look in your
25 personnel file, would we find that you're, on the whole, an
26 employee that's received outstanding ratings?

27 MR. MARIANO: I've received outstanding ratings
28 throughout my career, and I believe the staff received good

1 personal recommendations or comments about me from Mr. Brown and
2 Mr. Alarcon.

3 SENATOR BRULTE: While you may be a disgruntled
4 employee, you're one that is held in high regard? That's a
5 value judgment.

6 MR. MARIANO: I feel that with the people that I
7 work with, yes.

8 SENATOR BRULTE: You're still working? You're
9 number what, one, two, three, four, five? What is the Business
10 Administrator?

11 MR. MARIANO: It's the number three position at
12 the Youth Training School.

13 SENATOR BRULTE: How long have you been in the
14 agency?

15 MR. MARIANO: It'll be 27 years in July.

16 SENATOR BRULTE: Where did you begin?

17 MR. MARIANO: El Monte Parole as a parole aide.

18 SENATOR BRULTE: And then where did you go?

19 MR. MARIANO: This is my 20th job. I went into
20 Nellas in Whittier as an intermittent group supervisor, and then
21 through various jobs at Youth Training School. Then 17 years in
22 various jobs in personnel training. I was the training manager
23 for the Youth Authority. I was Assistant Superintendent at
24 Stockton when I did that investigation. I was head of Internal
25 Affairs for four months. I was on a special assignment at the
26 Director's office for six months. I was Assistant
27 Superintendent of Ventura School.

28 I'm probably leaving half a dozen out.

1 SENATOR BRULTE: You had made a comment, and I'll
2 check the record for this, and Evelyn, maybe by the time we have
3 the next hearing, I can see the transcript.

4 You had made the comment that lieutenants were
5 approved at the Headquarters level?

6 I'm unclear about the structure of the agency.
7 Mr. Alarcon is the Deputy Director and Acting Director. He
8 hires a superintendent to run an institution?

9 MR. MARIANO: The Director's -- my understanding
10 of the process is, the Deputy Director of Institutions comes to
11 the Director's office, being the Director and the Chief Deputy,
12 which is the position that Mr. Alarcon primarily held over the
13 last few years, with what they want to do, or they sit down and
14 discuss it. Then the Director or Mr. Alarcon would take the
15 list to the agency, Mr. Sandoval, and say, "This is what we want
16 to do."

17 I believe the agency or the -- I don't know what
18 happens after that part of the process, whether approved by the
19 Governor's office or the agency.

20 SENATOR BRULTE: When were you put in your
21 current position as number three at YTS?

22 MR. MARIANO: February of '95.

23 SENATOR BRULTE: And who appointed you to that?

24 MR. MARIANO: Mr. Alarcon.

25 SENATOR BRULTE: Where were you previous to that?

26 MR. MARIANO: I was the Assistant Superintendent
27 at Ventura School.

28 SENATOR BRULTE: Who appointed you to that?

1 MR. MARIANO: I'm not sure. I know Mr. Alarcon
2 approved it.

3 SENATOR BRULTE: One last question.

4 Why, given the fact that we had seven or eight --
5 again, I'll check the record -- people come up and speak in
6 favor of this appointment, and you're the only one speaking
7 against it, why do you think that is?

8 I understand I'm asking you to draw a value
9 judgment.

10 MR. MARIANO: Well, I know why some people aren't
11 here, at least based on what they would tell me.

12 If you notice, many of the people that are here
13 are representatives of professional or ethnic organizations, or
14 the Peace Officers Association.

15 People in the line level, or managers who might
16 agree with my position, or people that have knowledge of these
17 things, some of those people that have knowledge of these things
18 are in this room, and they are the Director's immediate
19 subordinates. So, I wouldn't expect them to come up here and
20 acknowledge particular issues, or they would have a different
21 perception of it than I would.

22 Most of the people who can tell you about these
23 problems work inside the Department. Most of those people are
24 planning to take promotional examinations.

25 At this point in my career, I'm more interested
26 in ethics and the good of the Department than I am -- I know
27 what's going to happen tomorrow. Even though I don't believe
28 there'll be some type of formal retaliation, there'll be a major

1 shunning, or people won't smile or talk to me. You know,
2 whatever, there'll be some kind of informal things.

3 I think most people --

4 SENATOR BRULTE: Let me take a minute to advise
5 anyone who's within the sound of my voice that we haven't
6 confirmed this appointment yet, so any shunning would be a very,
7 very bad idea.

8 MR. MARIANO: But for the last couple of years,
9 I've been aware that the Department doesn't see me as
10 promotable.

11 This is the first time I've spoken up outside the
12 Department, but I've spoken up many times. I gave Senator Ayala
13 reference to letters I've written and attempts to contact
14 Mr. Alarcon about problems.

15 I think one thing people would say about me
16 inside the Department is that I'm outspoken, and this is
17 important enough to me to be here today. I was asked, why are
18 you here today? I said, because it's very important for me to
19 be here from an ethical and professional standpoint.

20 CHAIRMAN LOCKYER: Who asked you that?

21 MR. MARIANO: People in the hallway have asked me
22 that.

23 SENATOR BRULTE: I have no other questions.

24 CHAIRMAN LOCKYER: Is there anyone else?

25 Assemblywoman, come on up.

26 Thank you, sir for your willingness to come
27 forward. Quite frankly, it's one of the few ways we hear about
28 what goes on within these large bureaucracies, is when people

1 are willing to subject themselves to criticism by saying the
2 Emperor has no clothes, or however you want to define the task
3 of pointing out possible errors in judgment. So, it's helpful.

4 SENATOR BRULTE: Just for Mr. Alarcon's benefit,
5 we're going to be in Washington next week.

6 CHAIRMAN LOCKYER: Right.

7 If he or anyone wants to comment on these matters
8 today, they can. But we'll have another full hearing and
9 interview him personally at a sub sequent meeting. That'll be a
10 week from Monday, I think, May 5th.

11 SENATOR BRULTE: Then I would like to ask Evelyn,
12 when do you think you could get the transcript to me.

13 CHAIRMAN LOCKYER: In a few days. You'll get it
14 in plenty of time.

15 Thanks.

16 MR. MARIANO: Thank you.

17 ASSEMBLYWOMAN THOMSON: My name is Helen Thomson.
18 I'm an Assemblyperson representing the 8th Assembly District,
19 which is Yolo and Solano, and a little sliver of Sacramento
20 Counties.

21 I didn't expect to testify today. I came in
22 expecting this would all have happened, and it'd be a slam-dunk,
23 but obviously, I'm still learning my way around this place.

24 CHAIRMAN LOCKYER: We never know, either.

25 ASSEMBLYWOMAN THOMSON: I have known Mr. Alarcon
26 in a different way from, perhaps, some of the testimony that
27 you've heard today. I've known him personally for 20 years,
28 since he has resided in Davis for at least in a long.

1 I was on the School Board in Davis for 12 years.
2 And I was member of the Board of Supervisors for 10. During all
3 of that time, Frank has been a very active member of our
4 community. He served as the Chair of the Mental Health Advisory
5 Board for number of years, always and advocating for young
6 people, always advocating for treatment services, for resources,
7 for rehabilitation. He was always there for prevention.

8 And I think that's something that I would hope
9 that you would take into consideration as we look at what some
10 of the youthful needs are in the state these days.

11 His personality is one of tenaciousness. He
12 coaches some soccer, and he's very involved in that in our
13 community. He's very involved personally in a lot of the youth
14 activities himself, and I think that those things all speak to
15 the total character and personality of the man that you are
16 considering for this appointment.

17 If my and advocacy has any value to you, I would
18 certainly commend his appointment to you. I think he has the
19 right abilities, and he has the right attitude. And I would
20 hope that he can be there to help us work our way through what
21 we're going to do with the youth of this state who end up in the
22 correctional system.

23 CHAIRMAN LOCKYER: We're delighted to hear from
24 you, and your long history is significant and helpful. Thank
25 you.

26 MR. GOLDBERG: Lenny Goldberg. I lobby in the
27 Capitol on a variety of public interest issues.

28 And I have also known Frank Alarcon in the

1 community. We've been soccer dads together. Our daughters are
2 best of friends, and we have occasion to spend a great deal of
3 time together and talk about a wide variety of issues.

4 I would say there's no question within the
5 community of Davis, Frank is an exemplary leader. He has been
6 very active in soccer, and youth look up to him. He dedicates a
7 tremendous amount of his time in the far ranging discussions
8 that we have.

9 I have no doubt that he is truly committed to the
10 youth in the Youth Authority, and that as a long standing civil
11 servant and not a political appointee for the State of
12 California, I think Mr. -- I think the State of California
13 should be grateful to have Frank Alarcon as someone in a
14 position of this amount of power.

15 So, I strongly commend his approval to you.
16 Thank you.

17 CHAIRMAN LOCKYER: Thank you.

18 Anyone else that had wished to comment.

19 Do you want to reserve the time until May,
20 Mr. Alarcon? You can do it either way.

21 MR. ALARCON: You tell me, Senator. I could
22 respond to comments of one opponent now or wait.

23 CHAIRMAN LOCKYER: I think I'm getting wait
24 signals from Members, so maybe that's the appropriate thing, if
25 you don't mind.

26 MR. ALARCON: I'd be happy to, thank you.

27 CHAIRMAN LOCKYER: Let me ask one final time, has
28 everyone had an opportunity to comment that would wish to?

1 Thank you, sir.

2 MR. ALARCON: Thank you, Senator.

3 [Thereupon. This portion of the
4 Senate Rules Committee hearing was
5 terminated at approximately 5:15 P.M.]

6 --ooOoo--

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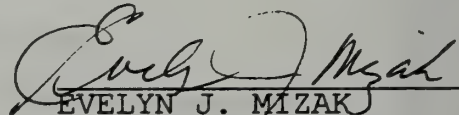
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SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

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California Youth Authority

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DOSSEY DOUGLAS, Perspective Employee

LAURENCE K. GOULD, JR., Trustee
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KEITH P. BISHOP, Commissioner
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SENATOR HERSCHEL ROSENTHAL

STEVEN THOMPSON
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JAMIE COURT
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HOWARD OWENS
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1 BETH CAPELL
2 SEIU

3 CARLA WOODWORTH, Executive Director
4 California Physicians Alliance

5 CHARLA COOPER, Complainant

6 JO GODFREY, Complainant

7 MARY GRIFFIN
8 American Medical Group Association
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX

Page

Proceedings 1

Governor's Appointees:

FRANCISCO J. ALARCON, Director
California Youth Authority 1

Background and Experience 1

Questions by CHAIRMAN LOCKYER re:

Recommendations that Derived from Staff
Murder at YTS 4

Perceived Problems at YTS 6

Noncompliance with Standards 7

Various Audits and Review 8

CDC Recommendations 10

Questions by SENATOR AYALA re:

Covering of Windows at Chaderjian 11

Determination to Uncover Windows 15

Turning Off Perimeter Lights at Preston
School to Save Money 16

Rape of Female Inmate at Ventura School
Infirmary 19

Security Problems at YTS Prior to
Murder of Staff Member 22

Policy Regarding Keys 23

Wearing of Personal Alarms 24

Questions by SENATOR BRULTE re:

Definition of M Case 25

Increased Security Risk at YTS 26

Proposal to Transfer M Cases to CDC 27

Department's Lack of Anticipation of the
Anxiety Level Due to Transfers 30

1	Limitations Placed on Incident Review	
2	Team by Criminal Investigation	31
3	Expansion of Investigation	33
4	Check-in/Check-out System	34
5	Personal Security and Supervisorial	
6	Experience	35
7	Self Audits by Institutions	36
8	Current M Cases in Department	37
9	Murder Incident at YTS	38
10	Reasons for Appointing Superintendent and	
11	Assistant Superintendent at YTS	38
12	Ultimate Actions by Director regarding	
13	VanderWeide and Shaw	40
14	System-wide Changes Initiated by YTS	
15	Incident Review	42
16	Problems at YTS since Instituting	
17	New Procedures and Policies	44
18	Personnel Record of VanderWeide	45
19	Likelihood of Independent Reviews vs.	
20	Self Audits if YTS Incident Hadn't Occurred ...	46

Questions by SENATOR AYALA re:

21	Prevalence of Nepotism at YA	47
22	Request for Report on Preston School's	
23	Practice of Turning Off Perimeter Lights	48
24	Plans for CYA Statewide Audit	48

Questions by SENATOR HUGHES re:

25	Difficulty Getting Staff to Accept	
26	Southern California Assignments	49
27	The Institutional Self Audits	50
28	Peer Reviews	50
29	Inner Feelings after Murder Took Place	
30	at YTS	51
31	Steps to Prevent Future Incidents	52

1	Various Check-in/Check-out Policies	
2	at Institutions	53

Witnesses in Opposition:

3	BOBBIE BIVENS, President	
4	Stockton Chapter	
5	NAACP	55

6	DOSSIE DOUGLAS, Applicant	
7	Position of Group Supervisor	62

Questions by SENATOR HUGHES re:

8	Textured Discrimination	64
---	-------------------------------	----

Questions by CHAIRMAN LOCKYER re:

9	Present Job Status	65
---	--------------------------	----

10	Length of Application Process	65
----	-------------------------------------	----

11	Request by CHAIRMAN LOCKYER of	
12	MR. ALARCON to Review Standards	
13	regarding Color Blind Applications	65

Questions by CHAIRMAN LOCKYER re:

14	Most Difficult Decision	66
----	-------------------------------	----

Questions by SENATOR LEWIS re:

15	Recent Dramatic Increase in Percentage	
16	of Minority Promotions in Department	67

Questions by CHAIRMAN LOCKYER re:

17	Ethnic Breakdown of Promotions and	
18	Hires within Department	67

19	Percentage of African-American	
20	Promotions	69

Questions by SENATOR LEWIS re:

21	Percentage of African-American Employees	
22	and Promotions	70

Questions by SENATOR HUGHES re:

23	Under Representation of Hispanic in	
24	Educational Services Branches of	
25	Department	71

26	Educational Requirements	72
----	--------------------------------	----

Statements by CHAIRMAN LOCKYER re:

General Feeling of Concern and
Disquiet in Youth Authority 74

Motion to Confirm ... 74

Committee Action 75

LAURENCE K. GOULD, JR., Trustee
California State University 75

Introduction and Support
by SENATOR BYRON SHER 75

Introduction and Support
by SENATOR ADAM SCHIFF 77

Background and Experience 78

Questions by CHAIRMAN LOCKYER re:

Philosophy on Student Fees 80

Controversies on Affirmative
Action Policies 81

Questions by SENATOR HUGHES re:

Role of CSU in Interacting with Schools
to Upgrade Educational Quality 82

CSU Working with Superintendent of Public
Instruction to Reduce Need for Remedial
Education 82

Number of Campuses Allowing High
School Students to Take Courses 83

Motion to Confirm ... 83

Committee Action 83

ROBERT L. TRIGG, Member
State Board of Education ... 83

Motion to Confirm ... 84

Committee Action 84

KEITH P. BISHOP, Commissioner
Department of Corporations . 84

Background and Experience 84

1	Statements of Concern by	
2	SENATOR HERSCHEL ROSENTHAL	86

Questions by SENATOR ROSENTHAL re:

3	Belief that Legislature Need Not Have	
4	Concerns about How HMOs Treat Patients	87
5	Department's Ombudsperson Program	88
6	Need for Consumer Advocate in Department	91

Questions by CHAIRMAN LOCKYER re:

7	Adjudication vs. Advocates for Consumers	91
8	Care about Consumers	92

Questions by SENATOR ROSENTHAL re:

11	Enforcement Policy regarding	
12	Individual Complaints against HMOs	93
13	Imposition of Penalties against HMOs	
14	in Individual Complaints	94
15	Commitment to Fully Revive the DOC	
16	Quality of Care Initiative	95
17	Administration's Position that SB 406,	
18	Which Removes HMOs from DOC Jurisdiction	
19	and into Department of Consumer Affairs,	
20	Should Have Fast-track Review by HMO	
21	Task Force	96

Questions by CHAIRMAN LOCKYER re:

22	HMO Task Force Review of Jurisdictional	
23	Issue	97
24	Need for Quick Action on Governance	
25	Decision by Task Force	97
26	Letter from DOC regarding Senate	
27	Committee Jurisdictions	98

Questions by SENATOR ROSENTHAL re:

28	HMO Mergers and Anti-trust Issues	100
----	---	-----

Questions by SENATOR LEWIS re:

29	Role of Commissioner in HMO Mergers	101
30	Complaints against Western Dental	102

1	Penalties against Western Dental	102
2	Nature of Deficiencies regarding	
3	Western Dental	103
4	Questions by SENATOR AYALA re:	
5	Record of Enforcement and Penalties	
6	against HMO Providers	104
7	Average Tenure of Commissioners	105
8	Questions by SENATOR LEWIS re:	
9	Success with Backlog of Consumer	
10	Complaints	105
11	Accommodation of Patients Who Desire	
12	Dental Work on Four Quadrants	
13	Simultaneously	107
14	<u>Witness in Support:</u>	
15	STEVE THOMPSON	
16	California Medical Association	107
17	<u>Witnesses in Opposition:</u>	
18	JAMIE COURT	
19	Consumers for Quality Care	110
20	Questions by CHAIRMAN LOCKYER re:	
21	Audit of Kaiser	117
22	Request that MR. HAGEN	
23	Recuse Himself	119
24	DOC's Contract with Institute	
25	for Medical Quality	121
26	Systemic Problem within DOC, not	
27	Lack of Competence	122
28	Rebuttal by MR. BISHOP re:	
	Action on Consumer Complaints	123
	Questions by CHAIRMAN LOCKYER re:	
	Kaiser Audit by DOC	124
	Kaiser's Grievance Process	125

1	Principal Responsibilities of	
2	MR. HAGEN, Assistant Commissioner	125
3	Subcontractors JCHO and IMQ	126
4	Adequacy of Staff Expertise within	
5	Department for Reviews	127
6	Contracting Out for Expertise	128
7	Further Rebuttal by MR. BISHOP re:	
8	Christie Case	128
9	Questions by CHAIRMAN LOCKYER re:	
10	Proposed Budget Cut of 47 Positions,	
11	\$3.6 Million.	129
12	Document Imaging Program	130
13	<u>Witnesses in Opposition:</u>	
14	HAROLD OWENS, President	
15	Health Access of California	131
16	Questions by CHAIRMAN LOCKYER re:	
17	Whose Responsibility Is It	132
18	Questions by SENATOR BRULTE re:	
19	Position on Outlawing HMOs	133
20	BETH CAPELL	
21	Service Employees International Union	134
22	Questions of MR. BISHOP by	
23	CHAIRMAN LOCKYER re:	
24	Possible Closure of Many Kaiser	
25	Facilities	134
26	When Kaiser Must Get DOC	
27	Approval for Structural Changes	135
28	Questions by SENATOR BRULTE re:	
	Request by SEIU for DOC to Hold	
	Public Hearings on Kaiser	136
	Filing of Notice of Material	
	Modification with Department	138
	Policy on Public Hearings	138

Questions by CHAIRMAN LOCKYER re:

Authority of DOC to Hold Public Hearings on Closures	138
Number of HMO Material Change Notices	139
Number of Public Hearings on Material Change Notices	139

Resumption of Testimony by MS. CAPELL	140
---	-----

Questions by CHAIRMAN LOCKYER re:

Purpose of Contracts	142
----------------------------	-----

Questions of MS. CAPELL by SENATOR BRULTE re:

Growing Concern over Abuses by HMOs	143
Slowness of Agency in Reacting to HMO Abuses	143

Witnesses in Opposition:

CARLA WOODWORTH, Executive Director California Physicians Alliance	145
---	-----

Statements by CHAIRMAN LOCKYER re:

DOC's Failure to Contact MARK HEBLER regarding HMO Regulation	146
--	-----

CHARLA COOPER, Complainant	148
----------------------------------	-----

Questions by CHAIRMAN LOCKYER re:

Position in Department of DALE RAYMOND	150
---	-----

Number of Urgent Complaints Received by DOC	151
--	-----

Letters of Complaint	152
----------------------------	-----

Questions of MR. BISHOP by CHAIRMAN LOCKYER re:

Referral of Cooper Complaint to Enforcement Division	153
---	-----

Questions of MS. COOPER by SENATOR BRULTE re:

Final Action Requested on Complaint	154
---	-----

Questions of MR. BISHOP by SENATOR BRULTE re:

Possible Range of Action against Kaiser 156

Questions by CHAIRMAN LOCKYER re:

Conclusion of Review of Cooper Complaint
by Enforcement Division 156

Closure of Cooper File 157

Need for DOC to be More Explicit about
Enforcement Possibilities 158

Questions of MS. COOPER by SENATOR HUGHES re:

Duration of Complaint Process 159

Questions of MS. COOPER by SENATOR BRULTE re:

DOC's Increase in Medical Reviewers 160

Request by CHAIRMAN LOCKYER for Number of
Urgent Complaints Received by DOC 160

Questions by SENATOR BRULTE re:

Complaint Backlog 160

Witness in Opposition:

JO GODFREY, Complainant 161

Questions by CHAIRMAN LOCKYER re:

Name of HMO Provider 164

Referral of Case to Enforcement
Division of DOC 164

Questions of MR. BISHOP by CHAIRMAN LOCKYER re:

Familiarity with Godfrey Complaint 165

Questions by SENATOR BRULTE re:

Requirement that Attorney General Must Get
Permission from DOC to Prosecute HMOs 166

DOC's Complain Form which Refuses to
Investigate Claims Where Legal Actions Have
Been Filed 166

1 Questions by CHAIRMAN LOCKYER re:

2 DOC's Current Complaint Form 166

3 Witness in Support:

4 MARY GRIFFIN

5 American Medical Group Association 167

6 Questions by SENATOR BRULTE re:

7 Direction of DOC's Enforcement and
8 Administrative Process 168

9 Questions by CHAIRMAN LOCKYER re:

10 Request to Finance by DOC for
11 Enforcement Budget Augmentation 169

12 Complaint Form 170

13 Questions by SENATOR HUGHES re:

14 How Often Department Changes Complaint
15 Forms 17116 Conceivability that Same Complaint Form
17 May Be in Use Today 172

18 Dating and Revising Forms 172

19 Questions by CHAIRMAN LOCKYER re:

20 Accessibility of Documents to Complainants ... 173

21 Questions by SENATOR BRULTE re:

22 Confidentiality Issue 173

23 Statements by CHAIRMAN LOCKYER re:

24 Decision to Hold Confirmation for
25 One Week in Committee before Vote 174

26 Termination of Proceedings 175

27 Certificate of Reporter 176

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: We'll start with Mr. Alarcon again.

Good afternoon, sir. Mr. Alarcon, at the last meeting, mostly we just heard testimony from people that had opinions to express either for or opposed to confirmation.

Perhaps you'd like to start today with any general comment that you may want to make to begin considerations, and then if there are any specific issues that you'd care to respond to, we'll give you an opportunity to do that.

MR. ALARCON: Thank you, Mr. Chairman, and Senators, and staff.

First let me say, I'm very honored. It's a privilege, really, to be here before you, and I feel like a very fortunate individual as well.

I'm really the product of two high school drop-outs who, I'm proud to say, are now celebrating their fifth decade of marriage. I have a very strong, supportive family.

I work for a department whose mission I feel passionately about, and whose people that work in that department, I believe, are some of the best public servants, not only in this state but around the country.

Public service is my career. I didn't back into it. From the time I was a youngster, I wanted to be in government; I wanted to work for the public.

Youth services has also been in my life, all my

1 life. My adult life, I've been involved in everything from
2 coaching kids, to being a child mental health advocate, to
3 helping to establish a child sexual abuse treatment center.

4 So, when I got the opportunity some 16 years ago
5 to come to the California Youth Authority and combine my career
6 of public service with youth services, I felt like I'd gone to
7 heaven. I had three public service internships before that, and
8 I worked at four different state departments.

9 Then again, 16 years ago, I became the Deputy
10 Director for administrative services at the California Youth
11 Authority. There I had responsibility for the various support
12 functions, including the budget, for the Youth Authority.

13 After that, I was promoted to Chief Deputy
14 Director, appointed Chief Deputy Director, and served in that
15 position for over nine years. During that period of time,
16 several occasions, was the acting Director during changes in
17 administration.

18 In total, I've worked for six different Directors
19 and three different Governors. A year ago, just about a year
20 ago, I was appointed Director by Governor Pete Wilson.

21 When I was first appointed, Mr. Chairman and
22 Senators, I began by issuing an agenda to all my staff and to
23 people outside the organization who worked with us on a regular
24 basis. I identified six areas that I believe California and the
25 California Youth Authority should be the national leaders.

26 Specifically, I talked about being a national
27 leader in handling of violent offenders, in correctional
28 education, in restorative justice, in transitioning offenders to

1 the community, and public and staff safety, and in advocating
2 for prevention. And I got overwhelming positive response, both
3 inside the department and outside, for that agenda. And we have
4 worked hard to develop a number of activities and objectives,
5 all geared to those six critical areas that I believe, again,
6 California should be national leaders in.

7 Things are going great. Three months after I was
8 appointed, the worst possible thing happened. We lost a family
9 member, Youth Counselor Ineasie Baker was murdered in the Heman
10 G. Stark Youth Training School.

11 While I won't say that that changed everything,
12 it certainly changed a lot. It made us all very much aware that
13 we had to double, triple, quadruple our efforts as it pertained
14 to safety in the organization. We've been working very hard to
15 do that, to shore up our policies and procedures, to standardize
16 our practices, and to make everybody aware on a daily basis that
17 they have to make safety their first priority in order for us to
18 carry out rest of our mission, protect the public, and to try to
19 change the most difficult youthful offenders that are committed
20 to us.

21 I've also had to make some very difficult
22 decisions during that period of time. And while you heard from
23 many supporters at the last hearing, I know you received a
24 number of letters, people inside and outside the department,
25 national and statewide, you also heard from an individual who
26 identified himself as a disgruntled employee. And he had a list
27 of issues.

28 Mr. Chairman and Senators, I prepared responses

1 to all those issues. They were submitted in writing to your
2 staff, and I believe that you have received those. I would ask
3 that those be accepted as my official response to those various
4 issues.

5 I really would like to say that I think there's
6 room for disagreement. I've always been known as an
7 administrator who didn't want to surround himself with yes
8 people, and I have very -- many different points of view that
9 are presented to me on a regular basis, and they have always
10 been. And I think that's healthy for the organization.

11 I appreciate this process, and what staff and all
12 of you have gone through in reviewing my qualifications. And
13 I'll be happy to respond to any questions that any of you have.

14 CHAIRMAN LOCKYER: Let me ask first, Members, if
15 there's any of the specific issues that were discussed at our
16 previous hearing that you'd rather have some specific oral
17 response from the Director? We do have a written commentary,
18 but if there are any of those matters that Members wanted to
19 comment on, let me open that up, plus any other general matters
20 if there's any topics.

21 I guess I'll start in that general way,
22 Mr. Alarcon, and that would be to ask for the thoughts and
23 recommendations that have derived from the unfortunate incident,
24 the killing. And then there were a lot of changes suggested
25 subsequent to that, CDC's role as an auditor in what changes of
26 that sort, and then maybe with respect to the general policy of
27 juvenile justice. It's my understanding you have a task force
28 that's been working on preparing some thoughts and

1 recommendations to us in that way.

2 So, with respect to each of those, if you'd just
3 help us understand, first, what actual changes are contemplated
4 or have been made because of the counselor's death.

5 MR. ALARCON: Great, I'll start with that.

6 There were three different processes that we
7 initiated. First was a special incident review. This was
8 started last September. The murder occurred in August.

9 We were allowed to begin our incident review in
10 September, and we were careful not to get ourselves involved in
11 a criminal investigation which was taking place at the same
12 time.

13 In that special incident review, a five-person
14 team went back and re-established the various events that led up
15 to the murder, and events subsequent to the murder up until
16 Ms. Baker's body was found.

17 And that review generated two additional
18 processes. One was series of Internal Affairs investigations.
19 Two of those investigations have led to the dismissal of two
20 employees. Other investigations are still continuing, and we're
21 still working very closely with the District Attorney and the
22 local PD.

23 The other part of that first initial review
24 generated was a major operations review. There were some things
25 that we found that occurred around the events surrounding the
26 death, not the murder itself, but other events occurring that
27 suggested there were policies and procedures that were not being
28 followed or appeared to be inappropriate. And I wanted to know

1 whether those were problems just at that particular living unit
2 where this incident occurred, or whether it was indication of
3 entire institution that may have serious problems.

4 So, I established an eleven-person team. Almost
5 half of that team were retired annuitants, many years in the
6 business. It included an associate warden from CDC. It
7 included a member of the District Attorney's office. And they
8 spent five weeks basically living at that institution. Four out
9 of five days they were there, shadowing every major program in
10 that institution, every major administrator.

11 They developed a report, submitted the report to
12 me, and that report indicated that there were a number of
13 problems, and also indicated to me, it was my decision, that we
14 needed to make a change in the leadership of that institution.

15 This in no way indicates that the individuals
16 involved, the changes I made, were bad people, but it was clear
17 to me they could no longer lead that particular institution.
18 And so, I made some management changes, and I've made several
19 other supervisory changes at that facility.

20 I'm pleased to say that I think response that
21 I've gotten from individual staff members is that we've
22 accomplished a lot even with that change. In the brief period
23 of time, the new leadership there has already identified some
24 serious problems and corrected them, and we're going to continue
25 to make improvements in that facility.

26 CHAIRMAN LOCKYER: What kind of problems? What's
27 the most serious problem you've found?

28 MR. ALARCON: Well, I'll start with the most

1 basic one, and that's attitude about safety, complacency. And
2 it's one of the most dangerous things that can happen in our
3 business, is to get complacent. And at times we tend to do such
4 a good job, or we get used to, maybe, changing our behavior just
5 slightly, and we see we get away with it, and we practice it
6 over and over again, becomes habit, that's you get yourself in
7 trouble.

8 And there things like that at this facility.
9 Like, too many staff not wearing their personal alarms, as an
10 example.

11 I made several visits down there. One of the
12 visits I made, I walked down the trade corridor there, and I was
13 finding pieces of metal, wire, in places where they shouldn't
14 be. That's not a sign of an institution that's taking care of
15 business as far as safety is concerned.

16 I saw a youthful offender driving a forklift. I
17 looked around, and I could not find somebody that had their eyes
18 watching that youthful offender. That concerned me.

19 I randomly visited some individual rooms, and I
20 found rooms that did not meet Department and that institution's
21 standards. So, things were not looking good.

22 CHAIRMAN LOCKYER: With respect to what? Which
23 standards were not in compliance?

24 MR. ALARCON: Well, for example, I'll just give
25 one example. A room that had way too much stuff in it, and we
26 had -- the institution had just, half a dozen months before that
27 reduced the amount of paraphernalia that could be allowed in a
28 room. It was unkept. It was filthy. And, Senator Ayala will

1 appreciate this one, there was a large box of Ajax sitting in
2 this room after, we had make it very clear that that was not to
3 be the case.

4 So, you see, I was very concerned about changes
5 that needed to be made at that facility, and they're being made
6 today. That's sort of the microcosm there.

7 There are bigger issues around changing policies
8 and procedures, not just at that facility, but statewide,
9 including making sure that we have clear check-in, check-out
10 procedures at all institutions. Looking at how we might
11 increase perimeter security, in particular those places that
12 don't have the more secure fences and more up-to-date
13 technological devices that we have around the fences. Some are
14 older than others.

15 We propose in this budget, which we've met with
16 fairly good success so far in budget subcommittees, a number of
17 measures to further improve safety and security, including the
18 addition of canines in Southern California. It's a capacity
19 we've had in Northern California. In previous years, when there
20 weren't resources available, we were not able to get the support
21 to add canines in Southern California. It looks like we're
22 getting that today, Senator, both in the Assembly and Senate
23 sides.

24 That's a brief example of some of the things
25 we've been doing.

26 CHAIRMAN LOCKYER: Are there differences between
27 these particular oversight activities in management review and
28 the assistance that CDC provided to look?

1 MR. ALARCON: Good question. We have many
2 different reviews taking place. My feeling is that we're a
3 public agencies. Even though we're the so-called experts in our
4 field, we don't have all the answers, and the more people we
5 have from the outside looking at us, the better.

6 CHAIRMAN LOCKYER: Were there other things?

7 MR. ALARCON: Yes, we had CDC come in and do a
8 security audit. And it was done on a pilot basis. We've had a
9 security audit process historically, but it's been a self
10 audit. And the institutions each year, their chief of security
11 is supposed to submit a summary of the results of that audit,
12 and identify any deficiencies, and what they're going to do to
13 correct it, or what they're asking for in terms of assistance to
14 make correction.

15 And that process seemed to work fine. But as a
16 result of this, and having done this outside audit, I'm
17 convinced that self audit isn't good enough. We've got to have
18 outsiders come in. And so, we're establishing --

19 CHAIRMAN LOCKYER: Are you trying to expand that?

20 MR. ALARCON: Yes, statewide, a minimum of one
21 audit for each facility on an annual basis is our goal.

22 In addition, I began discussions with the
23 American Correctional Association several months ago. In this
24 date, we have never been accredited by the national
25 organization, for a variety of reasons. And we're now pursuing
26 bringing them into our facilities. They look at it from a
27 little different perspective.

28 In addition, I have a Juvenile Justice

1 Commission. In fact, you have a Member appointed to that
2 Commission. And they make regular reviews of our facility.
3 Now, their emphasis previously was not so much on security; it
4 was on other areas. We're now going to incorporate security as
5 part of their responsibility as well, so that's another group
6 we're going to have come in regularly, taking a look at what
7 we're doing.

8 CHAIRMAN LOCKYER: What was an example of
9 recommended change that the CDC audit produced? Something that
10 comes to mind that was a substantial security issue?

11 MR. ALARCON: I'll mention the first thing that
12 came to mind.

13 They found that our tool control in plant
14 operations was less than adequate, so we made corrections
15 there.

16 CHAIRMAN LOCKYER: You made some changes there.

17 MR. ALARCON: Yes.

18 CHAIRMAN LOCKYER: Now, separate from the
19 Juvenile Justice Commission you've served on, along with the
20 other district attorneys and so on, do you have your own
21 Juvenile Justice Task Force? Or, do our notes on this refer to
22 that other body?

23 MR. ALARCON: They're probably referring to that
24 other body. I do have a commission, again, that's advisory to
25 me. They do get into some of those very same issues.

26 CHAIRMAN LOCKYER: Overlap with the commentary?

27 MR. ALARCON: Yes.

28 CHAIRMAN LOCKYER: Other questions from Members?

1 Senator Ayala.

2 SENATOR AYALA: Yes, Mr. Chairman.

3 As Mr. Alarcon knows, I've been involved with
4 this problem of the juvenile justice program for a number of
5 years. I first got involved when Mr. Lyle Eagan was the
6 Superintendent at Chino, which was the first one, I think, at
7 the time. And I've been involved quite extensively since the
8 murder there at YTS. And since the murder, I have visited YTS,
9 and I visited Chaderjian, and I visited Preston School. So, I'm
10 quite involved with the program.

11 One of the reasons is because I have five prisons
12 in one school district. Chino School District has five prisons,
13 so we're a little bit concerned about the prison system.

14 I had some questions typed that I came up with
15 since my visits to all these organizations pertaining to the
16 Youth Authority. We started with Chaderjian. The
17 Superintendent there informed me that they were covering up the
18 little windows in the cells, or whatever you call them.

19 MR. ALARCON: Living units.

20 SENATOR AYALA: Where the wards live and sleep
21 most of the time, I guess.

22 He said it was because it got too noisy, and they
23 could make a lot of racket, and also they could communicate with
24 other gang members.

25 When did you first discover the windows were
26 closed with a little peep-hole that they could look through
27 there? What was your first indication of that, that it was
28 taking place at Chaderjian?

1 MR. ALARCON: First knowledge, it was probably
2 couple years after that had been initiated.

3 SENATOR AYALA: Did you ever question the
4 practice of that?

5 MR. ALARCON: Yes, I did. I had similar
6 questions, I think, that probably you had when you made your
7 visit. The response I got back is that it had dramatic effect
8 on the environment of that institution.

9 When that institution first opened up, and we
10 transferred wards to fill that institution, it was designated
11 one to hold the most difficult older offender. Again, when it
12 first opened, we had a lot of serious incidents occurring.
13 There was a lot of acting out behavior on the part of the
14 inmates there. And there were a number of inmates -- I say
15 inmates because we had the M cases then at that time as well.

16 And the institution took it upon itself at that
17 time to identify different ways of calming the place down, and
18 that was one of the things they incorporated. And it seemed to
19 work for them.

20 However, in hindsight, there are some --
21 obviously some serious concerns about the possibility of keeping
22 those flaps on. Other things could possibly happen.

23 Staff assured me that they were doing regular
24 enough checks that something serious is not likely to happen
25 without staff being aware.

26 That was an attempt to incorporate a safety item
27 in the facility.

28 SENATOR AYALA: You did question the practice of

1 the Superintendent to take that kind of action on his own?

2 MR. ALARCON: No. He didn't violate any
3 statewide policy or branch policy.

4 Again, in hindsight, probably would have been
5 preferable had he taken that one up through the chain of
6 command, but it didn't violate any policy.

7 SENATOR AYALA: But they've taken them down
8 since?

9 MR. ALARCON: Yes, they have.

10 SENATOR AYALA: If they were doing such a good
11 job, why did you do it?

12 MR. ALARCON: Because there were additional
13 concerns raised since they were put up.

14 SENATOR AYALA: By whom? Who raised the
15 concerns?

16 MR. ALARCON: Well, some of them were concerns I
17 raised. Some were concerns that I heard even from your own
18 visits. Some were concerns related to inmate assaults on each
19 other that occurred most recently. It was a combination of
20 those factors.

21 SENATOR AYALA: I raised one of the concerns
22 because a ward at that school was murdered in a cell by a fellow
23 cell mate there. He was tortured for hours, according to the
24 report we have. And he was tortured during the night. He was
25 murdered and raped and everything else.

26 It wasn't discovered until the next day that,
27 that night, that the young fellow had been murdered.

28 I just wondered if you had more opening for the

1 correctional officers who are on watch to take a look at the
2 cells.

3 MR. ALARCON: Actually, Senator, it would not
4 have made a difference in that case because you can't see into
5 the room from the control center. The log showed that -- and
6 I'm familiar with the case you're talking about -- the log
7 showed that regular checks were made.

8 This ward, without getting too much to the
9 details of the case, this ward has successfully covered up what
10 he was doing.

11 SENATOR AYALA: I don't think that was the one
12 that caused the murder, because that person wasn't going
13 anywhere. Murdering someone in the cell with the cell mate, I
14 think he expected to be caught. He wasn't going anywhere.

15 I just wondered if he wouldn't have been abused
16 like he was if the window hadn't been closed.

17 Anyway, they're now down, I understand?

18 MR. ALARCON: Yes.

19 SENATOR AYALA: Through your order.

20 Now, the dead ward's family is now suing is the
21 state.

22 MR. ALARCON: That's correct, and that somewhat
23 limits what --

24 SENATOR AYALA: What is the basis of the lawsuit,
25 do you know? The basis of the lawsuit by the family of that
26 ward that was murdered?

27 MR. ALARCON: Well, that might be more
28 appropriately answered by my legal counsel. I'm not sure what I

1 can really say about that, given that is being litigated.

2 SENATOR AYALA: I just wondered how much
3 resources the Department was planning to spend to defend this
4 case. But you're not aware of that legal matter at all?

5 You're saying now that the windows have been
6 uncovered. Who made that determination, you or the
7 Superintendent?

8 MR. ALARCON: I made it.

9 SENATOR AYALA: You made the determination. He
10 told me he did it on his own. I wasn't aware that they could
11 take that action.

12 I can see in an emergency, taking any action
13 necessary before getting approval from the Director, but I would
14 think the Director would have the final say-so on an action of
15 that nature, but apparently they had the authority to do that,
16 the superintendents.

17 MR. ALARCON: Well, again, I'll just address that
18 one specific incident or change that they made. It wasn't
19 anything in the policy that said they couldn't do that. Let's
20 put it that way.

21 SENATOR AYALA: We visited Preston School. I
22 toured the facility, and I was very impressed with the boot
23 camp. I think that's one of the better things that we are doing
24 in our system to get the young people to be so programmed. I
25 was impressed with that portion of it.

26 But, however, we had a problem there, too, of two
27 wards escaping. I was told that the reason for that is because
28 the Superintendent had ordered the lights turned off, the

1 perimeter and interior at night, after the last ward count, to
2 save money, I was told.

3 Was that the reason they turned off the lights at
4 the perimeter of the prison?

5 MR. ALARCON: Senator, you're mentioning
6 something that I'm not aware of.

7 SENATOR AYALA: You're not aware of that?

8 MR. ALARCON: No. When you say that that escape
9 was due to turning off the light, I'm sorry, I can't address
10 that.

11 SENATOR AYALA: I was told that last July, during
12 the night when the lights were turned off, two wards escaped
13 from their cells. They went across the compounds --

14 MR. ALARCON: I don't think their escape had
15 anything to do with whether there were lights or no lights.

16 SENATOR AYALA: That was in the report. I have
17 the report. It was a report to you, by the way.

18 MR. ALARCON: Again, I don't --

19 SENATOR AYALA: I was there last week. I was
20 told same thing by the new Superintendent, that that's how these
21 people escape, because at the last count, you turn off the
22 lights, and that's when they went out. In fact, one of them
23 must have been juice ward, as you folks called them, because he
24 knew where to go, in the maintenance shop. And he got some wire
25 cutters and cut a hole in the fence, about 150 yards from the
26 staff main sally port and escaped.

27 Now, this is all in the report given to me.

28 MR. ALARCON: Without having the report in front

1 of me, I can't directly respond. But I recall, because it's
2 been a while since that occurred.

3 What I remember is that --

4 SENATOR AYALA: This was last July.

5 MR. ALARCON: -- the wards hid behind a certain
6 part of the building there. It's difficult, again, for me to go
7 into the details without going back to the report.

8 SENATOR AYALA: Well, they went directly to the
9 maintenance shop --

10 MR. ALARCON: But it didn't have anything to do
11 with whether the lights were on or not that they got away.

12 SENATOR AYALA: I just toured the facility last
13 week, and I was told that was the case, and they turned off the
14 lights, quote, "to save money." I was a little bit disturbed
15 with that statement, because they're supposed to keep those
16 people in there at any cost --

17 MR. ALARCON: I understand.

18 SENATOR AYALA: -- apparently.

19 So, you were not aware that they were shutting
20 off the lights at Preston to save money when the two wards
21 escaped? You're not aware of that?

22 MR. ALARCON: I'm aware that institutions take
23 various means to reduce their costs, particularly when we get to
24 the end of the year, and populations fluctuating. We got to
25 stay within budget, and that may be one way that that facility
26 was dealing with increased costs.

27 SENATOR AYALA: Was anyone at the Sacramento
28 Headquarters aware or had approved the lights going out at night

1 at that institution?

2 MR. ALARCON: I don't know, Senator.

3 SENATOR AYALA: You don't know that.

4 MR. ALARCON: No.

5 SENATOR AYALA: According to the staff letter
6 that I received, the Department actually took adverse actions,
7 not against the Superintendent, but against the security officer
8 that went to check on the fence alarm that went off that night,
9 in the dark, with his own personal flashlight.

10 The Department demoted the officer. The State
11 Personnel Board, however, determined that the Department's
12 actions were not justified and have reinstated the officer.

13 Were you aware of that?

14 MR. ALARCON: No, I was not, Senator.

15 I was aware that there was security staff person
16 who was on probation at the time that this occurred. And that
17 his probationary period was ended.

18 SENATOR AYALA: But these actions are not given
19 to you for your information?

20 MR. ALARCON: No, no, again, I'm aware of that
21 particular case. I'm not aware that, as you say, that the State
22 Personnel Board has reinstated this individual. That's news to
23 me.

24 SENATOR AYALA: I assume that you did not approve
25 the shutting off the lights. Did you in any way reprimand the
26 Superintendent for doing so?

27 MR. ALARCON: I did not.

28 SENATOR AYALA: Where is he now, this gentleman

1 who was in charge there?

2 MR. ALARCON: Again, without having specific
3 information as to when we're talking about, it's hard for me to
4 respond, Senator.

5 SENATOR AYALA: We're talking about Greg Zermeno.
6 Where is he now? He was the Superintendent at the time.

7 MR. ALARCON: Greg Zermeno is now in the NCYC
8 complex. He's the Superintendent of Dewitt Nelson.

9 SENATOR AYALA: He's in charge of four facilities
10 now; right?

11 MR. ALARCON: No, he's in charge of one facility,
12 and then he has the support functions, yes.

13 SENATOR AYALA: That's not promotion; is it?

14 MR. ALARCON: No, it was a lateral transfer.

15 I have an informal policy of rotating
16 superintendents approximately every five years. Mr. Zermeno fit
17 that description.

18 SENATOR AYALA: It's come to my attention that
19 the Ventura School now, that's my next visit, that a female ward
20 was recently raped by another ward at the Ventura School
21 infirmary.

22 MR. ALARCON: I am familiar with that one, yes,
23 sir.

24 SENATOR AYALA: The female ward was staying in
25 the infirmary for medical treatment. Two other wards -- again,
26 I have to assume it's the juice ward because you had movement --
27 were in the infirmary as janitors, and these wards were working
28 unsupervised.

1 Are you aware of that?

2 MR. ALARCON: I'm aware that we have taken
3 adverse action against an employee who wasn't doing --

4 SENATOR AYALA: Unsupervised.

5 MR. ALARCON: -- doing their job.

6 SENATOR AYALA: How could any school allow wards
7 to work unsupervised in an infirmary with sick wards or
8 medication around, including drugs?

9 MR. ALARCON: Senator, that shouldn't happen.
10 Very simply, that should not happen.

11 Wards should not be unsupervised.

12 SENATOR AYALA: So, what happened to the
13 supervisor who was in charge of that officer who was not on the
14 job? What happened to the person who has been blamed for the
15 rape?

16 MR. ALARCON: The person who was directly
17 responsible for not providing appropriate supervision, we have
18 taken appropriate action.

19 SENATOR AYALA: Like what?

20 MR. ALARCON: It's difficult for me to get into.
21 I'm somewhat limited in what I can say in terms of personnel,
22 but I can assure you that action was taken.

23 SENATOR AYALA: Well, the incident happened
24 approximately ten months ago. And has anybody been reprimanded
25 from staff for that action?

26 MR. ALARCON: Yes, sir.

27 SENATOR AYALA: They have been.

28 What sort of punishment is the Department seeking

1 for this type of an incident? A demotion, like I hope at
2 Preston, where they're in charge, and then they're promoting to
3 a four institution facility? I don't understand this sort of
4 thing. What's happening to the people at that school, Ventura?
5 When this took place, those in charge, were they at all dealt
6 with?

7 MR. ALARCON: Yes, Senator.

8 SENATOR AYALA: What's happening to those people
9 out there?

10 MR. ALARCON: There was an investigation, and
11 we've dealt with those individuals appropriately through adverse
12 action.

13 I must say that there was some complications
14 here, in that we tried to get the District Attorney to prosecute
15 the case, and the District Attorney ultimately made a decision
16 that they were not able to prosecute because of lack of
17 evidence, and the belief that there was some cooperation between
18 the victim and the perpetrator. So, we're somewhat limited in
19 what we could do.

20 SENATOR AYALA: I saw the report. There were two
21 wards at the time, and one didn't see anything.

22 MR. ALARCON: Right.

23 SENATOR AYALA: Who's responsible for security at
24 the Ventura School Infirmary? A Custody officer or a medical
25 staff? Which would be the person in charge of security? The
26 medical staff or --

27 MR. ALARCON: Well, inside the unit, you would
28 have hospital aids. There should be a group supervisor security

1 on the outside.

2 SENATOR AYALA: The Assistant Superintendent at
3 Preston School told me that he had been a part of the security
4 team that had reviewed the security at YTS after the Baker
5 murder. He stated that just prior to being named the Assistant
6 Superintendent at Preston, he used to be in charge of the
7 security at Nelles School.

8 He further stated that in his opinion, YTS did
9 not have any major security problems. They dismissed the
10 security officer and two of the main officers there, but this
11 individual who was one that did some of the investigation claims
12 that they had no security problems there.

13 Now, this is very confusing to me since YTS, as I
14 said earlier, the Superintendent and the Assistant
15 Superintendent were both demoted and transferred over the
16 incident. In addition, the Department asked for numerous costly
17 budget proposals in response to YTS staff murder.

18 In your opinion, did YTS have any security
19 problems prior to the murder?

20 MR. ALARCON: Did they have any security problems
21 prior to the murder? Well, again, I'll reiterate some of the
22 things that I found, even my own visits, that suggest that
23 things had to be a problem before the murder occurred.

24 SENATOR AYALA: They had problems?

25 MR. ALARCON: Yes.

26 SENATOR AYALA: Well, this individual, who was
27 part of the team that, I guess, you appointed, claims that there
28 were not any major security problems.

1 MR. ALARCON: That's a surprise to me, Senator,
2 because everybody on that team told me that there were.

3 SENATOR AYALA: Now, if keys always keep coming
4 up, the keys, you told me that the keys were no longer allowed
5 for the officers to take home with them any more?

6 MR. ALARCON: What I told you is, I established a
7 policy that we're going to get rid of having the need for keys.
8 And that is one of topics on main table discussions in our
9 bargaining sessions. That's what we're going to accomplish.
10 We're going to get rid of keys.

11 SENATOR AYALA: At YTS, that has been stopped?

12 MR. ALARCON: The taking home of keys, no.

13 SENATOR AYALA: I was under the impression that
14 you told me --

15 MR. ALARCON: No, security staff still have their
16 keys.

17 SENATOR AYALA: I know they do it at Preston; I
18 know that because they told me they did it.

19 MR. ALARCON: In fact, Senator, we have some
20 facilities that had the practice of taking home keys for 25
21 years.

22 SENATOR AYALA: The reason that I keep bringing
23 that up is because I believe that the Baker member of the
24 correctional officers was killed for her keys. I've had
25 information that could lead to that.

26 Institutional keys could serve as the primary
27 motive for wards attacking staff. As such, the Department needs
28 to develop a stronger safeguard for accounting for all the keys,

1 not taking them home and losing them, and someone can make a
2 duplicate and give it to some ward inside. You're just
3 jeopardizing the safety of the correctional officers when you do
4 that.

5 MR. ALARCON: Senator, you have made your point
6 very, very well. I know you've encouraged me and supported me
7 to make that change, and we're working to do that.

8 My hope is that by the time we talk come next
9 year, you'll know that that's happened.

10 SENATOR AYALA: You also told me that the wearing
11 of personal alarms had been a mandate, and made clear that you
12 wear them at all times; is that correct?

13 MR. ALARCON: That's correct.

14 SENATOR AYALA: The lady involved hear, the
15 victim, was not wearing her alarm belt.

16 MR. ALARCON: That's correct.

17 SENATOR AYALA: That's one of the reasons you
18 think she had the problems?

19 MR. ALARCON: That certainly contributed to it,
20 yes.

21 SENATOR AYALA: That concludes my questioning,
22 Mr. Chairman.

23 CHAIRMAN LOCKYER: Senators, anything additional?
24 Senator Brulte.

25 SENATOR BRULTE: I've got a couple questions
26 based on the testimony from the previous hearing.

27 At the outset, let me say that I understand that
28 there are certain jobs in state government that are easier than

1 others. Being a Senator is kind of an easy job. And there are
2 some that are more difficult. I'm not aware of any that are as
3 difficult as job that you and some of your co-workers do.

4 MR. ALARCON: Thank you, Senator.

5 SENATOR BRULTE: I'd like to ask you a couple of
6 questions.

7 First of all, could you just explain for the
8 record what an M case is?

9 MR. ALARCON: Sure.

10 There was legislation passed back in 1983, it
11 became effective in '84. Basically, an M number is a juvenile
12 by age who is committed to the adult court by the adult court,
13 literally committed to the Department of Corrections, but by
14 court order, are housed in the California Youth Authority.

15 SENATOR BRULTE: At the last hearing, one of the
16 witnesses said that M cases -- let me see if I have this
17 right -- said that last summer, the Governor signed legislation
18 requiring that most M numbers held in Youth Authority be
19 transferred back to the Department of Corrections. And that
20 created security problems within the institutions.

21 About how many M cases were there in the entire
22 agency?

23 MR. ALARCON: Well, at one time, I think we
24 peaked at about 1400 M cases.

25 SENATOR BRULTE: Are they a higher security risk
26 to prison staff, correction staff, than the regular population?

27 MR. ALARCON: Well, from line staff, frankly, you
28 get mixed reaction. Many staff would say that in a lot of

1 respects, they are not as risky in this way. If an M number
2 misbehaves, refuses to program, does anything Inappropriate, we
3 have the authority to immediately ship them to the Department of
4 Corrections. So, there is incentive for them to behave, if you
5 will.

6 In fact, this may sound kind of crazy, but when
7 we actually transferred 800 and something of these guys out,
8 there were a number of staff that were sorry to see that happen,
9 because these were, in many cases, the inmates that were sort of
10 cooperating, and helping, and keeping the places clean. That
11 may sound crazy, but that really was part of the reaction.

12 On the other hand, they wouldn't be tried in
13 adult court unless they committed serious crimes.

14 So, yes, I would put them at considerable risk.

15 SENATOR BRULTE: The witness claimed that once
16 the law was changed that the Governor signed, the security risk
17 was increased. Is that your sense?

18 MR. ALARCON: I think that's true for this
19 reason. There were lots of radio reports, and inmates and wards
20 were picking up that this bill had actually passed and signed,
21 and they started asking questions, and there was, I think, some
22 heightened anxiety. So, yes, I would agree.

23 SENATOR BRULTE: In your response that I received
24 this morning -- I don't know, it's marked confidential -- you
25 said that the dealing with the M cases was consistent with what
26 had been previous policy, and that the witness was wrong. The
27 law change didn't affect that. Let me see if I can quote you
28 exactly.

1 "This bill in fact does not specifically address
2 those inmates already housed in Youth Authority facilities.
3 During the legislative process and in the Governor's budget, it
4 was always the plan that inmates already housed in the
5 Department would be transferred to CDC under normal process."

6 MR. ALARCON: Yes, let me clarify that, Senator.

7 The M case transfer, the proposal was my
8 proposal. I mean, I had pursued it. And at one time it was in
9 trailer bill language in the budget. It didn't make it for a
10 variety of reasons, which you don't need to go into.

11 But our budget made the assumption that it was
12 going to pass, and that we would no longer accept M cases
13 beginning January first. And that budget assumption assumed no
14 longer getting any inmates January first, and that any existing
15 M numbers that we already had in the system would attrid. out
16 under normal procedure. Which, historically, we washed out
17 about 40 percent of M numbers on an annual basis.

18 And so, a matter of a couple of years, those who
19 were already in the system, already sent to us courts, where the
20 deals, if you will, were struck with all the parties in the
21 justice system, they would trid out over a period of time.

22 That was the original assumption, that was all
23 the planning that went into this.

24 SENATOR BRULTE: You believe they were a higher
25 security risk, but there no higher security maintenance of them;
26 is that correct?

27 MR. ALARCON: Again, once the bill did pass, and
28 this increase in anxiety occurred, within a matter of days is

1 when we instructed all the institutions. There was a meeting
2 involving most of the superintendents involved who had M cases.

3 They were instructed to sequester M numbers to
4 their living units. In other words, not let them program
5 outside of their living units, not go to school, not go to other
6 outside activities they might be involved in for that very
7 reason.

8 Prior to that time, as I say, it was, depending
9 on who you talked to, a lot of staff would tell you they weren't
10 as high a risk, but I think the potential was there.

11 SENATOR BRULTE: So, prior to the passage of the
12 legislation that the witness talked about, there wasn't a higher
13 security for those M numbers?

14 MR. ALARCON: No, it varies, really, by
15 individual. In other words, we had probably our largest number
16 -- not probably, I know we had our largest number of M cases at
17 YTS. And there's a reason for that, because YTS has single
18 cells. In my system, unfortunately, I have a lot of beds that
19 were built back in the '50s and '60s, or even before that, that
20 are dormitory. And we try to avoid putting M numbers in
21 dormitory settings.

22 On the other hand, there are some M numbers that
23 have demonstrated that they are capable of making change.
24 They've taken advantage of the services the Youth Authority has
25 offered. In other words, they've met the conditions, the reason
26 why, maybe, the judge said, "Let's put them into YA," and they
27 ended up being some of our best camp people. I mean, they
28 perform forestry work, in obviously the least secure setting

1 that we have, so it's really a mixed bag.

2 SENATOR BRULTE: My question I'm trying to get to
3 is, the witness said that M cases weren't locked down prior to
4 the legislation passing. The legislation was signed by the
5 Governor.

6 In your response, you say that the witness was
7 mistaken in his belief that required M numbers to be transferred
8 back to CDC. In fact, it doesn't even specifically address
9 those inmates. You had anticipated the process, and you
10 intended to deal with them under normal conditions?

11 MR. ALARCON: Correct.

12 SENATOR BRULTE: Then what occurred to change
13 that, because you then say you had a meeting with affected
14 supervisors within the Department, and you developed alternative
15 plans?

16 MR. ALARCON: A number of things changed that.
17 Again, one was the immediate anxiety, that feedback that we were
18 getting that, hey, people where concerned out there, wondering
19 what's going on.

20 Second, our population at that time was going
21 skyrocketing. We had already started the process of looking
22 at -- we had run out of space. We haven't gotten any new
23 capacity in some time, Senator. And we were already looking at
24 the possibility of filling gyms and programs areas like CDC has
25 had to do. When we start doing that, we erode the mission of
26 the Youth Authority. We're no longer running a Youth Authority
27 facility; we're running something else.

28 All those things combined, the overcrowding,

1 anxiety that existed, the belief on the part of our agency as
2 well that we ought to be looking at alternatives. That got us
3 to looking at potentially moving existing M numbers, which,
4 under existing criteria, existing regulations, I had authority
5 to make some decisions on.

6 SENATOR BRULTE: Did you get a surprise estimate
7 in your growth?

8 MR. ALARCON: What's that?

9 SENATOR BRULTE: Did you get a surprise estimate
10 in your growth? I mean the growth numbers for the Department
11 had been published long before.

12 MR. ALARCON: That's correct, Senator. For a
13 number of years, I've been trying to get increased capacity, and
14 I haven't been successful. We have been forced to crowd. We
15 basically double celled every single room that was available,
16 and we filled dormitories to their maximum.

17 SENATOR BRULTE: Is it safe to say that the
18 Department didn't anticipate the anxiety level increase that
19 might have come about from legislation?

20 The witness suggested that staff and inmates were
21 hearing over the radio about action in Sacramento. You,
22 yourself, both in the record and here have now said that you
23 reacted to that and changed the policy.

24 Why didn't the agency anticipate that as a
25 potential problem?

26 MR. ALARCON: Well, because all along, we thought
27 it was clear what our plan was.

28 The witness suggested that there wasn't any

1 planning that took place in advance, and that just wasn't the
2 case. We had a plan, and it was the one that I described to
3 you.

4 But we had to make changes. We had to make
5 changes to that plan. Situation had changed, and it was
6 necessary for us to make some quick decisions about adjusting
7 our population.

8 SENATOR BRULTE: I don't think the witness said
9 you didn't have a plan. I think the witness said you did have a
10 plan. I think he said you had your plan, and it was the wrong
11 plan.

12 MR. ALARCON: No, sir, that's not what I recall
13 from one of his letters that he wrote, and I believe that was
14 the letter he passed out at the last hearing.

15 SENATOR BRULTE: I'm reading the record.

16 MR. ALARCON: You're probably looking at a
17 summation.

18 SENATOR BRULTE: Another one, the YTS murder
19 incident review report, a witness claimed that the incident
20 review focused primarily on logistics and chronology and how the
21 incident occurred, and that very few management issues were
22 mentioned.

23 This is your response. You cited the page of the
24 transcript. And you said that the review team was limited in
25 their review, primarily because you didn't want to get in the
26 way of an ongoing criminal investigation by the Chino Police
27 Department.

28 MR. ALARCON: Yes, that special incident review

1 was not an investigation. It was to establish the events and
2 the timeframes of those events that occurred before and after
3 the murder until body was found.

4 An example, the many interviews that were
5 conducted by that incident review did not include Larberger
6 rights or peace officer rights.

7 This was strictly to establish the timeframes,
8 which, by the way, provided some additional help ultimately to
9 the criminal investigation.

10 It was never intended to be anything more than
11 that.

12 SENATOR BRULTE: I'm confused as to what point
13 you're making here.

14 The witness --

15 MR. ALARCON: My suggestion is that this incident
16 review didn't go beyond establishing what I just told you we
17 tried to establish, and that was timeframes and sequence of
18 events that occurred before and after the murder. That's
19 exactly what that incident review was supposed to do.

20 SENATOR BRULTE: Which is what the witness
21 claimed is all it did.

22 MR. ALARCON: Correct.

23 SENATOR BRULTE: The witness claimed that all
24 that did was deal with logistics and the chronology.

25 MR. ALARCON: And I guess I'm agreeing with the
26 witness. That's what they were supposed to do.

27 SENATOR BRULTE: But in your written response,
28 you didn't agree with the witness. In your written response you

1 said that, let me quote exactly, and correct me if I'm wrong. I
2 just want to find out what's here.

3 "The review team was sent to the Youth Training
4 School by the Director, was asked to review the chronology
5 surrounding the incident." I'll paraphrase here.

6 The scope of the review team was limited due to
7 the fact that the Director's office did not want the review team
8 to do anything that would interfere or jeopardize with the
9 ongoing criminal investigation.

10 MR. ALARCON: And the witness is critical of
11 that, thinking that we should have looked at other things
12 besides that assignment.

13 SENATOR BRULTE: But the reason you limited that
14 was because you didn't want to get into the way of an
15 investigation?

16 MR. ALARCON: The criminal investigation was
17 still under way.

18 SENATOR BRULTE: When the criminal investigation
19 was completed, did you expand the scope of the review?

20 MR. ALARCON: When the criminal investigation was
21 completed, I think the DA might argue that it still hasn't been
22 completed, but I did the more comprehensive operations review
23 that I described earlier.

24 SENATOR BRULTE: What did you find?

25 MR. ALARCON: I found a lot of ongoing problems
26 at the facility, from communication, to poor practices, to lack
27 of tool control, to failure to have a check-in, check-out
28 system. There were a number of issues that we found in that

1 review.

2 SENATOR BRULTE: What's the check-in, check-out
3 system?

4 MR. ALARCON: That's a way of assuring that at
5 all times we know what staff are within the facility and what
6 staff have left the facility.

7 SENATOR BRULTE: Give me an example how you do
8 that. You come in in the morning, and I can look around --

9 MR. ALARCON: Sure. One of the simplest ways is,
10 an employee walks into whatever entrance has been designated.
11 Sometimes it's the sally port, sometimes it's the administration
12 building. And there's an accountability board. They may have
13 an ID, or they may have brass tag that has their name and their
14 number on it.

15 They move that brass tag or that ID to where
16 they're going to be that day, and they usually have the picture
17 or their name facing out so that everybody knows that that
18 person is here, and they're at Unit One.

19 When they leave at the end of their shift, they
20 remove that tag or that ID, and they turn it over so their
21 picture's no longer showing, or the name's no longer showing,
22 and they put it back in some other area on the board so, it's
23 clear that they've left the facility.

24 That's one way that you can keep regular check as
25 to who's there and who's not.

26 SENATOR BRULTE: Back to the previous hearing,
27 the claim was made that seven of your eleven superintendents,
28 all of whom have been appointed during your watch, or by your

1 decision or strong recommendation, have little or no security
2 knowledge or experience.

3 You went on in your written response to say that
4 eleven of these superintendents have over 20 years with the
5 Department?

6 MR. ALARCON: That's correct.

7 SENATOR BRULTE: The average is over 24; six
8 started their Youth Authority careers as entry level peace
9 offers?

10 MR. ALARCON: Correct.

11 SENATOR BRULTE: Ten superintendents held
12 positions of supervisory peace officers, and all have held
13 management peace officer positions during their careers.

14 MR. ALARCON: That's correct, Senator.

15 SENATOR BRULTE: How many of those positions have
16 you ever held?

17 MR. ALARCON: Have I ever held? I never held any
18 of them.

19 As I mentioned in my summation or my opening
20 comments, I started here as the Deputy Director for
21 administration 16 years ago.

22 SENATOR BRULTE: Have you ever attended the basic
23 peace officer academy?

24 MR. ALARCON: I have attended courses over a
25 period of years. I probably by now have attended most of the
26 classes.

27 I am weapons qualified, and I've taken the PCA 32
28 training.

1 SENATOR BRULTE: One of the witnesses claimed
2 that the security audits were conducted only by mail. These
3 were self audits?

4 MR. ALARCON: That's correct. I mentioned that
5 earlier, Senator.

6 SENATOR BRULTE: Any institution ever fail one of
7 those self audits in the time you've been with the agency?

8 MR. ALARCON: Not failure, but I think some
9 institutions did a better job than others of identifying
10 weaknesses and describing what they were going to do to correct
11 them.

12 SENATOR BRULTE: You've now instituted a system
13 where there are no longer self audits?

14 MR. ALARCON: Correct, Yes.

15 SENATOR BRULTE: How many of those have been
16 accomplished?

17 MR. ALARCON: We've only accomplished one
18 institution. That was our pilot institution. We used that to
19 develop a protocol that will be used throughout the state.

20 SENATOR BRULTE: What institution was that?

21 MR. ALARCON: The N.A. Chaderjian School in
22 Stockton.

23 SENATOR BRULTE: How did they do?

24 MR. ALARCON: On grades A Through F, I'd say they
25 had maybe a C+, B-.

26 SENATOR BRULTE: How did they grade themselves
27 last year when they did their own?

28 MR. ALARCON: I think probably above average. I'd

1 have to go back and compare it again, but I think they probably
2 saw themselves as above average.

3 SENATOR BRULTE: Would the average person, if
4 they looked at those two reports, suggest that there were
5 discrepancies between the two reports?

6 MR. ALARCON: Large ones, no. There wasn't
7 anything -- and it's too bad we don't have someone here from
8 that audit team from CDC here -- but there wasn't anything there
9 that they would describe as very serious. It was mostly fine
10 tuning improvements.

11 SENATOR BRULTE: Are you glad there aren't any M
12 cases in CYA today?

13 MR. ALARCON: Yes, Senator, except I can't say
14 there aren't any. We have a group that will still continue to
15 be sent to us, and that's the age 14 and 15 year olds, and
16 those under 18 who can complete their time by age 21. The law
17 didn't eliminate all M numbers. We have about 300 still in our
18 system, and we expect that that will probably level out at about
19 200.

20 But, yes, I am.

21 SENATOR BRULTE: Are there any special security
22 requirements today for them?

23 MR. ALARCON: No, there are not.

24 SENATOR BRULTE: Were there at any period in the
25 last year-and-a-half?

26 MR. ALARCON: Special requirements, we did a
27 series of training back in the late '80s and early '90s, and
28 developed a manual specifically for the handling of M cases,

1 both in the institutions and on parole. Much of it was
2 procedural type of matters, you know, how to handle -- because
3 we're talking about different laws and different codes on
4 discipline, procedures, time adds or reductions, that kind of
5 thing, because they're doing determinate sentences, and our
6 juveniles are doing indeterminate sentences.

7 But beyond that, no. There is nothing in the
8 statute. We talked about this when we first got M numbers back
9 in 1984, nothing in the statute that really basically allowed us
10 to treat them any differently, so we didn't.

11 SENATOR BRULTE: Let's go back to YTS and the
12 murder that occurred there.

13 The leadership of that institution was brought in
14 by whom?

15 MR. ALARCON: By Craig Brown and myself. Craig
16 was the Director, and I was the Chief Deputy.

17 SENATOR BRULTE: Why did you bring them in?

18 MR. ALARCON: The previous Superintendent
19 retired, and the other Superintendent, the Assistant
20 Superintendent, was moved to another assignment.

21 SENATOR BRULTE: Was YTS a model institution when
22 you brought them in, or was it a troubled institution?

23 MR. ALARCON: I think there were already signs
24 that there was trouble.

25 SENATOR BRULTE: And you brought the --

26 MR. ALARCON: I don't think, I know there was.

27 SENATOR BRULTE: You brought the Superintendent
28 and Assistant Superintendent in because they were below average,

1 above average, average? Why did you bring them in?

2 MR. ALARCON: Well, Mr. VanderWeide, I guess I
3 can use his name, spent 24 of his 29 years at the Youth Training
4 School, and had expressed previously a dream to some day finish
5 his career as a Superintendent there. And he was at the Fred C.
6 Nelles School at the time, and the opening came up.

7 I'll tell you honestly, it's been very difficult
8 to get our managers to go to Southern California and take
9 assignments as the superintendents and assistants at those
10 facilities.

11 Miss Adrian Shaw was willing to go to Southern
12 California and take the assistant job. At the time, we thought
13 they would make a good team, Van having had numerous years
14 knowing that institution. And Adrian had recently been a
15 superintendent in Northern California, smaller institution, but
16 a lot of her background was in labor relations. And we knew
17 that was an area that we really needed some strength in at that
18 facility. So, at the time we thought the two would make a good
19 team.

20 SENATOR BRULTE: Why did you think that that was
21 essential for that institution?

22 MR. ALARCON: It is so large. It's larger than
23 any other facility. I mean, there's no other facility
24 compares. So, there are a lot more employees, obviously, and
25 just a lot more activity.

26 One of the reasons why we made a change at the
27 Assistant Superintendent previously was because we needed
28 somebody who had more labor relations experience.

1 SENATOR BRULTE: Unfortunately, we had a murder
2 at that institution.

3 MR. ALARCON: Yes, we did, Senator.

4 SENATOR BRULTE: What did you do with the
5 Superintendent and the Deputy Superintendent? What is it,
6 Assistant Superintendent?

7 MR. ALARCON: Assistant Superintendent, yeah.

8 SENATOR BRULTE: What did you with those two
9 people?

10 MR. ALARCON: You mean immediately after the
11 murder?

12 SENATOR BRULTE: Sure.

13 MR. ALARCON: Tried to provide them all the
14 support we could.

15 I think what you're leading to is what ultimately
16 did I do. And 15 months after they arrived there, I terminated
17 the Career Executive Assignment of the Superintendent. He
18 returned to the highest civil service level in the Department
19 and is now assigned as an administrator for Educational Services
20 in Southern California.

21 The Assistant Superintendent I lateralled back to
22 Northern California, and she is now working at Northern
23 Reception Center Clinic here in Sacramento.

24 SENATOR BRULTE: Is a move from a Career
25 Executive Service to the highest level of civil service, would
26 the average person take that as a demotion?

27 MR. ALARCON: Yes, yes. Career Executive
28 Assignments serve at the pleasure of the appointing power, the

1 Director. And I have 65 positions out of 5400 in the Department
2 that are designated managerial, and probably half of those are
3 CEAs, Career Executive Assignments, mostly the superintendents,
4 assistant superintendents, deputy directors. That's pretty much
5 it.

6 SENATOR BRULTE: So, you took the Superintendent
7 and demoted the Superintendent?

8 MR. ALARCON: I terminated his CEA, yes.

9 SENATOR BRULTE: And you took the Assistant
10 Superintendent and --

11 MR. ALARCON: Laterally transferred her to
12 Northern California.

13 SENATOR BRULTE: Why didn't you demote her?

14 MR. ALARCON: Well, this gets into personnel
15 matters that I think there's probably some privacy issues we're
16 getting into, but the circumstances were different.

17 SENATOR BRULTE: Without going into privacy
18 issues, what were the circumstances, other than one was a
19 Superintendent and the other was the Assistant Superintendent?

20 MR. ALARCON: One lateralled to that facility
21 from being a Superintendent to an Assistant had no prior
22 experience at that facility, and had much less experience
23 working in facility, period.

24 I saw that situation different than someone who
25 had worked virtually their entire career in the facilities, and
26 90 percent of it at that facility.

27 There was also a difference in reaction to what I
28 had to share with them about the findings of our operation

1 review. In one case, I had found someone accepting that. Many
2 of the things that we talked about, in fact, were issues.

3 SENATOR BRULTE: What operations review is that?

4 MR. ALARCON: This was the eleven-person review
5 that spent five weeks at the facility.

6 SENATOR BRULTE: That was different from the
7 incident review?

8 MR. ALARCON: That was different from the
9 incident review, yes.

10 Anyway, the circumstances were different, without
11 getting too much personnel.

12 SENATOR BRULTE: The operations review led to a
13 number of changes?

14 MR. ALARCON: Yes, sir.

15 SENATOR BRULTE: Were any of those changes
16 instituted system wide?

17 MR. ALARCON: I'd have to stop and think, go
18 through the different areas.

19 Well, keep in mind that at the same time,
20 actually before we even completed the operation review, we had
21 been doing a review of a number of different areas. In fact,
22 Senator Ayala was very active in asking questions about some of
23 these areas of all our facilities.

24 In other words, we did, for example, review of
25 what are the check-in, check-out policies right now and
26 practices at all of the facilities, and did they still meet the
27 standards that are identified in our manual.

28 So, yeah, there were changes that I would say

1 were in part become statewide changes. We learned a lot from
2 this review.

3 SENATOR BRULTE: Ten percent, twenty percent,
4 fifty percent? Of the changes you instituted at YTS, how many
5 of them, what percentage of those were instituted system wide?

6 MR. ALARCON: Well, some of them were merely
7 re-emphasizing what already was policy but wasn't being
8 practiced very well. Like, I reissued a memo to all staff about
9 wearing their personal alarms. Clearly, something that wasn't
10 going on in a regular basis at YTS.

11 I had no knowledge that there was severe
12 violations of that going on at other places, but I wasn't going
13 to wait for somebody to tell me that. So, we reissued that
14 memo.

15 Another issue, if I might just mention is, it's
16 always been understood practice that you don't go into a room
17 alone with an offender. Again, we reissued that, reminded
18 people, and told our supervisors they need to hold people
19 accountable if they violate that policy for their own protection
20 and safety.

21 SENATOR BRULTE: Having looked at the review and
22 instituting that, is it your -- and this is clearly
23 speculative -- but is it your belief that had those been
24 instituted prior to the murder taking place, the murder wouldn't
25 have taken place?

26 MR. ALARCON: It really is speculation, Senator,
27 but I believe that the changes of that having occurred would
28 have been less, let's put it that way.

1 SENATOR BRULTE: How do you draw that conclusion?
2 Share with me your thought process.

3 MR. ALARCON: Let me just give you one example,
4 because again, I've got to be careful not to get too much in
5 this.

6 And please, my legal counsel, wave your hand if I
7 get in trouble.

8 One example is that the victim was not wearing a
9 personal alarm when she was murdered.

10 SENATOR BRULTE: Anybody been stabbed or
11 assaulted at YTS since you've required people to wear personal
12 alarms?

13 MR. ALARCON: Oh, yes. Well, first of all, they
14 should have always wore personal alarms, but since it was
15 re-emphasized, yes. There have been, I believe, two since
16 February.

17 Most recent one -- keep in mind, these are still
18 under review and investigation, and some actions are probably
19 going to result -- but let's see, one of them had to do with two
20 staff that took a ward down a hallway. The ward, who was in
21 restraints, took off from the two employees and attacked another
22 employee in another room.

23 The other incident occurred when two of our staff
24 were trying to remove a ward from his room. And he refused to
25 cooperate. They sprayed pepper spray under the door. The ward
26 took a blanket, sheet, and covered himself up. Staff went in
27 before the pepper spray took effect, and the ward came out from
28 under the cover and again hit the employee.

1 Those are the two most recent incidents.

2 SENATOR BRULTE: Prior to your demotion of
3 Mr. VanderWeide, would you say he was an excellent employee of
4 the agency?

5 MR. ALARCON: I would say he was a good
6 administrator, to my knowledge.

7 SENATOR BRULTE: Is that why you sent him there?

8 MR. ALARCON: Again, I sent him there for a
9 couple reasons. One, because I believed he was at least a good
10 administrator. Second, because I knew he wanted to go to YTS
11 some day, and he was getting near the end of his career. And
12 three, the opening came up, and we can't get a whole lot of
13 people wanting to take Southern California institutions. And
14 that's just reality. He was willing to do that.

15 SENATOR BRULTE: Then someone was murdered, and
16 he was demoted?

17 MR. ALARCON: He was not demoted specifically
18 because of the murder. There's only one person responsible for
19 the murder, and that's the perpetrator, Mr. Ferris, who is being
20 prosecuted.

21 But what the murder did is, it pointed out a lot
22 of things that were not right at that facility for which he does
23 have responsibility.

24 SENATOR BRULTE: Calls for speculation, but was
25 he a model supervisor and administrator, getting outstanding
26 personnel reports his entire career, and then made a mistake at
27 YTS?

28 Or, is the system such where he was not a model,

1 just happened to get outstanding reports, and just did at YTS
2 what he had always been taught to do?

3 MR. ALARCON: Very difficult for me to answer
4 that Senator. I appreciate what you're trying to get at in the
5 question you're asking.

6 But, you know, I didn't directly supervise him.
7 I go by evaluations, and in that particular case, who would have
8 supervised him and who would have given --

9 SENATOR BRULTE: But you put him in place?

10 MR. ALARCON: I definitely put him in place. I
11 don't think it's -- you know, there's only so many people that
12 are eligible to take those positions. I think Mr. VanderWeide
13 would have been considered somebody that definitely not only was
14 eligible, but probably generally had done a good job.

15 I wouldn't have put somebody there that we knew
16 was going to be a failure. I mean, I at least had hope that
17 that move was going to be a positive one for everybody.
18 Unfortunately, it didn't turn out that way.

19 SENATOR BRULTE: If the murder hadn't taken
20 place, would we have had an independent review, or would we
21 still be doing self audits?

22 MR. ALARCON: No, we would have had an
23 independent review. Sir, I had already initiated -- it hadn't,
24 unfortunately, got off the ground when all this happened, but I
25 had been trying to get a peer review process going. Not
26 necessarily outside agencies doing the review, but basically
27 pulling people from different facilities to look at other
28 facilities. And that was already in motion when all this

1 happened.

2 SENATOR BRULTE: Thank you.

3 CHAIRMAN LOCKYER: Are there other questions?

4 Senator Ayala.

5 SENATOR AYALA: I just have three more.

6 Number one, nepotism, is it prevalent with the
7 Youth Authority, about average, or below average? I know it's
8 all over the state, we know that, but in your department.

9 MR. ALARCON: If you talk about, are there a lot
10 of employees that work in our department that are related to
11 each other, you know, including several generations, probably
12 above average. We're one of those organizations --

13 SENATOR AYALA: Above average?

14 MR. ALARCON: I think so, because people come to
15 the organization and they stay. And then other people follow
16 their fathers and mothers into the career. So, it's above
17 average.

18 SENATOR AYALA: Nepotism is when you favor --

19 MR. ALARCON: But nepotism itself, Senator, I
20 wrote our nepotism policy some years ago because I discovered
21 when I was here just how many people were related to each other,
22 and we didn't have a policy.

23 SENATOR AYALA: But the answer is, it's higher in
24 the Youth Authority than with other departments?

25 MR. ALARCON: Having worked at four other state
26 departments, yes it's higher.

27 SENATOR AYALA: And the reason is?

28 MR. ALARCON: Again, people come and stay, and

1 they enjoy this career.

2 We have a policy in place to minimize, you know,
3 inappropriate situations. And that policy is followed.

4 SENATOR AYALA: If you have an opportunity, would
5 you give this Committee, or at least me, a report on Preston,
6 and the turning off the lights for economy purposes? I think
7 that's a very serious charge that's been surfaced here to me.

8 MR. ALARCON: I'd be happy to do that, Senator.

9 SENATOR AYALA: And number four, do you plan a
10 CYA statewide audit to be conducted?

11 MR. ALARCON: Yes, sir.

12 SENATOR AYALA: You plan to do that?

13 MR. ALARCON: I plan security audits every place,
14 yes.

15 SENATOR AYALA: Thank you.

16 CHAIRMAN LOCKYER: Yes, Senator Hughes.

17 To manage our calendar today, we're probably
18 going to have to delay the confirmation discussion about which
19 we have the greatest amount of latitude because the date is less
20 immediate than some of the others, and that would be to not hear
21 Ms. Reed today.

22 If there is anyone who is from out of town that
23 came to comment pro or con on her confirmation, perhaps you
24 would stay, if there is anyone, so that we can at least get that
25 testimony on the record.

26 Just looking at how long we're taking with
27 Mr. Alarcon, then what I would anticipate with Mr. Bishop, I
28 think probably we've just got too big a load on too small a

1 mule.

2 So, if there is anyone that wants to comment on
3 Reed, maybe you'll let the Sergeant or someone know for me.

4 Excuse me for interrupting, Senator Hughes.

5 SENATOR HUGHES: Thank you very much.

6 Maybe you've answered some of these questions.
7 If you have, would you please let me know. I've been trying to
8 follow this carefully.

9 You said it's difficult to get staff to go to
10 Southern California institutions. Why?

11 MR. ALARCON: You know, I don't mean --

12 SENATOR HUGHES: The weather is much better.

13 MR. ALARCON: Those individuals, it's probably
14 best to say that, but a number of things. One is the cost of
15 living down there, purchasing homes.

16 It used to be, you know, historically in the
17 Department moving around numerous times during a career was not
18 an issue. Now it is so costly to make those kind of moves that
19 I think that's part of it.

20 I think there is sort of a feeling, particularly
21 on the part of managers and supervisors that grow up in Northern
22 California, that they just don't have the desire to be in
23 Southern California.

24 SENATOR HUGHES: Since you said that there is a
25 certain amount of nepotism, perhaps they don't want to leave
26 family, extended family?

27 MR. ALARCON: That can come into play as well,
28 yes, ma'am.

1 SENATOR HUGHES: Let's talk a little bit about
2 when you started the peer review. How long did that system take
3 place, and what happened that it fell apart?

4 MR. ALARCON: You mean when we were doing self
5 audits?

6 SENATOR HUGHES: Yes.

7 MR. ALARCON: We had self audit process in place
8 for many years. I couldn't tell You exactly when it started.

9 SENATOR HUGHES: Maybe I have the wrong
10 explanation. I thought a peer review was when you had someone
11 from another institution to review --

12 MR. ALARCON: That's correct. What I indicated
13 is, it was my intent to have peer reviews.

14 SENATOR HUGHES: Right, but you never did?

15 MR. ALARCON: No. We had this one major
16 operation review, and we're going to have peer reviews. But as
17 I said, I was in the process of getting it off the ground when
18 all this happened.

19 SENATOR HUGHES: Peer review sounds like a very
20 good idea. Where did you get the idea from, and are you
21 planning on pursuing that at any time in the future?

22 MR. ALARCON: Yes, absolutely.

23 Again, I've been looking at how can we get lots
24 of other eyes looking at what we do. I think that's critical.
25 We've had this group from CDC that's been going to our
26 institutions and spending a great deal of time, giving us
27 feedback.

28 I've asked, again, ACA to look at how we might

1 become accredited.

2 Our education program, we've invited the Western
3 Association of Schools and Colleges for the first time to take a
4 look at certifying, accrediting our education programs.

5 So, I'm very, very much in support of outside
6 review.

7 SENATOR HUGHES: I hate to go back and ask this
8 question, but I really --

9 CHAIRMAN LOCKYER: This is the last time you'll
10 ever see this guy.

11 SENATOR HUGHES: All right, so I might as well
12 ask it.

13 CHAIRMAN LOCKYER: Yes, they get very different
14 once they're confirmed.

15 SENATOR HUGHES: What were your inner feelings?
16 I know what your outer manifestations were after the murder?
17 What were your inner feelings when the murder took place?

18 Then, what are your inner feelings as you look in
19 retrospect?

20 MR. ALARCON: It was very, very devastating. I
21 did not know Ineasie Baker personally, but I felt as if I did.
22 I would be less than honest with you if I didn't say that it
23 really weighed on me heavily.

24 And each time that we talked about what happened,
25 the various memorial services that I spoke at, her funeral which
26 I spoke at, I mean, it was tough. It was like I had lost a
27 family member, even though I didn't know her.

28 SENATOR HUGHES: Did you feel any sense of

1 responsibility? Did you feel that you could have done something
2 to prevent it?

3 MR. ALARCON: I asked that question many, many
4 times. I mean, it was on my watch. So, ultimately, I've got to
5 take the responsibility for anything that happens.

6 Yes, I asked myself that question myself, is the
7 there anything you could have done?

8 SENATOR HUGHES: If someone told you that
9 tomorrow at one of your institutions that there's a threat of a
10 murder, what would you do tomorrow that you didn't do then?

11 MR. ALARCON: If there was a threat of a murder?

12 SENATOR HUGHES: Yes, if someone says, "Well, at
13 institution X, we have underground information that there is
14 going to be a murder," what steps would you take?

15 MR. ALARCON: Well, various stages in terms of
16 emergency preparedness. And the first stage is, you pull in all
17 the staff to that institution, regardless whether they're off
18 duty or not, to get the additional resources necessary to do
19 what you have to do.

20 If there's a need to go beyond that, then the
21 first thing we need to do is, turn to our sister agency, CDC,
22 and get their assistance. Third stage is, we pull in local law
23 enforcement and California Highway Patrol. And the ultimate
24 stage in the most serious incident would be calling on help from
25 the California National Guard.

26 So, there are different resources that we could
27 turn to if the situation was real serious. And we'd always
28 involve local law enforcement on any investigation, criminal

1 investigation.

2 SENATOR HUGHES: Do the various institutions have
3 different check-in and check-out policies?

4 MR. ALARCON: The overall policy is the same.
5 That is, that there shall be one.

6 The way in which they do it varies somewhat, and
7 we want to standardize that. In fact, we'll be letting out a
8 proposal here very shortly. We've redirected money in the
9 current year. We froze some money in primarily minor capital
10 outlay, and we're going to put in automated check-in, check-out
11 systems at all our facilities.

12 SENATOR HUGHES: Right now, are all check-in,
13 check-out policies different at each institution?

14 MR. ALARCON: The policies are the same. The
15 practices are slightly different.

16 SENATOR HUGHES: You mean the philosophy behind
17 the policy?

18 MR. ALARCON: Yes, they all meet some key
19 criteria, but the actual practice varies. Like, some, as I
20 mentioned, use ID badges. Others use a brass ID tag.

21 So, there are different variations like that, but
22 they all meet the same criteria.

23 SENATOR HUGHES: Have you done a comparative
24 study, where you have institutions where their check-in and
25 check-out policies were similar, do you have a decrease in the
26 number of I know incidents or an increase in them? Have you
27 done any kind of comparative analysis?

28 MR. ALARCON: I'm not aware of any differences in

1 outcomes due to different check-in, check-out.

2 SENATOR HUGHES: You didn't answer my question.
3 I said, have you done any comparative analysis of those
4 institutions --

5 MR. ALARCON: We've compared --

6 SENATOR HUGHES: -- where the policies were
7 basically similar, and the number of incidents that occurred, or
8 the lessened number of incidents?

9 MR. ALARCON: Well, Senator, the only thing the
10 check-in, check-out does is keep track of who's in the facility,
11 when, and when they leave.

12 SENATOR HUGHES: How do they show who was there?
13 You said something about a card where they turned with their
14 picture faces. Is there some other method of check-in,
15 check-out that is different from that at some of the
16 institutions? They have a check-in and check-out?

17 MR. ALARCON: Other than IDs, or tags?

18 SENATOR HUGHES: Yes, that's what I'm trying to
19 ask.

20 MR. ALARCON: No, and we've looked at all of
21 them. They all have some kind of variation on that.

22 SENATOR HUGHES: Are there any that have had
23 fewer incidents because their check-in, check-out system was
24 similar to another?

25 MR. ALARCON: I got you. I'm not aware that are
26 any differences.

27 SENATOR HUGHES: Do you plan on doing anything
28 like that?

1 MR. ALARCON: I'm planning on going beyond that,
2 Senator. We're going to have a state-of-the-art check-in,
3 check-out system with these automated systems. And they'll be
4 fingerprint or handprint systems. They'll keep track by
5 computer who's in, who's out, with definite ID, obviously.

6 And there will also be an alarm system built in
7 so that if somebody checks in, and they're assigned to
8 particular shift, and they haven't checked out by the time
9 they're supposed to check out, the alarm system goes off. The
10 computer then alerts the security that we need to find out where
11 this person is, why they haven't left.

12 So, it's going to be a top of the line system
13 when we're complete, and it'll be implemented -- we will start
14 installing the end of this month, and the last installation
15 should be complete by August first. So, by the end of the
16 summer, we'll have new systems in place.

17 SENATOR HUGHES: All right, thank you.

18 MR. ALARCON: You bet, thank you.

19 CHAIRMAN LOCKYER: Other questions?

20 Well, we're almost done. Let me first ask if
21 there are people who haven't had an opportunity to testify or
22 comment that would wish to have something added to the record?

23 Yes, sir, why don't you come up, sir. This is
24 Mr. Bivens.

25 MR. BIVENS: Thank you, Mr. Chairman.

26 CHAIRMAN LOCKYER: Good afternoon, sir.

27 MR. BIVENS: Good afternoon to the Committee
28 Members.

1 My name is Bobbie Bivens. I am the President of
2 the Stockton Branch NAACP. Also the Labor and Industry
3 Chairperson for the State of California branches of the NAACP,
4 and a National Board Member for the NAACP.

5 I have some serious concerns here today with the
6 confirmation of Mr. Alarcon. And those concerns are that he has
7 been on watch directly or indirectly for almost ten years. And
8 we have incidences of death taking place.

9 It wasn't just a death, or that the young lady
10 was killed. I mean, this is an individual. Not just a person
11 that just died.

12 The situation is that the folks at the
13 institution didn't even care enough to try to find out what had
14 happened to her after her family had called, which is a lack of
15 concern on their behalf.

16 We're fortunate that more people have not been
17 killed or that no research has been done, or that no one has
18 checked.

19 This woman's child called to see where her mother
20 was, and nobody bothered to go look and see. Nobody cared,
21 apparently.

22 This man, Mr. VanderWeide, wasn't demoted, as
23 the question was asked. He was promoted to another position
24 that was created for him after this woman's death.

25 That's the kind of situations we have taking
26 place.

27 We have other concerns that, at the top
28 administrative level of staff, there is a disparity in racial

1 equity, that the promotional picture that was shown to you in
2 these charts that were distributed today are inaccurate, and
3 that they do not speak to the disparity in the promotions. They
4 do not speak to the fact that in the State of California
5 correctional system, or the Youth Authority system, there is but
6 one Asian female at an administrative position. The number of
7 Asian males is very low.

8 The picture looks beautiful, but it's not broken
9 down into categories. It does not speak of ethnic promotions,
10 female promotions. It simply says an entire group. It does not
11 go into the categories of the promotions. It doesn't say
12 whether they're administrative, or whether they're supervisory,
13 or whether they're directors, assistant directors. None of that
14 is spelled out.

15 This is simply a chart to say that X number of
16 minorities were hired lately or promoted. Not even hired. It
17 doesn't speak to the hiring patterns. There's nothing in these
18 charts that were presented today that speaks to the hiring
19 patterns.

20 The other concern that we have is that for the
21 average African-American, it takes 15 years to get promoted,
22 15. For other groups, and particularly white males, it takes
23 about two years.

24 We're concerned that that level of disparity has
25 taken place under this man's watch. And to say that we're going
26 to do all of these things in the future, when the opportunity
27 has been there in the past, is kind of like saying, well, we've
28 let the horse out of the barn, so let's go out and chase him and

1 catch him, when in fact there was an opportunity to put up a
2 fence to prevent it, to take some action to ensure that equal
3 opportunity and access exists for all people.

4 We're not advocating that just African-Americans
5 have equal opportunity. We're advocating that all people have
6 equal opportunity.

7 The number of African-American females that are
8 at your higher level positions are have few. If we take a look
9 at the Northern California facilities, you've got for
10 supervisors, you have three white males, you have one Hispanic
11 male, no black males, no white women, no Hispanic females, no
12 black females, no Asian males, no Asian females.

13 If you take assistant superintendents, you have
14 one white female, one white male, two Hispanic females, one
15 black male, and none of the rest.

16 Those numbers are not being broken out in his
17 charts. I've taken the time to do the research, and I don't
18 have access to the entire system, the data base and all that. I
19 simply talked to individuals and did my research to find out
20 names, faces, and places. That gives the information. If I can
21 do it, I'm sure he can do it. He's a lot smarter than me. He's
22 heading up the department. I'm just a poor businessman.

23 The other concern that we have is that there is a
24 break down. There is no breakdown into the opportunities for
25 the new hires, the new promotions. This chart does not speak to
26 where the opportunities were. We don't know if there are a
27 hundred opportunities, ten opportunities, or zero
28 opportunities. That was not spoken to.

1 But a beautiful picture is being painted in here,
2 saying that we have ethnic diversity in our workforce. And
3 certainly in California, we all want it, and certainly we all
4 deserve it.

5 But to have a picture painted that makes it look
6 like something is here that's not here leads to another lie.

7 So, are we going to be lied to continuously by
8 the department heads and the people that run our state
9 agencies?

10 We're concerned with the retaliation against
11 African-American employees and Hispanic employees that dare to
12 complain about the system, that complain that they're not being
13 treated fairly. And in fact, what happens to them is, either
14 they get shipped out, or so much pressure is put on them that
15 they never say anything, that the system just continues to roll
16 along, status quo, or status as usual.

17 And the other side of it is, we've had two people
18 commit suicide because their issues were not addressed. These
19 things are not being said.

20 This individual is responsible to see that the
21 people that work under him don't create that type of climate.
22 That type of climate has been created.

23 So, we're not talking about one death here.
24 We're talking about three deaths, and we're not even talking
25 about wards yet. We're talking about employees of the State of
26 California that go to a job, that feel that they should be able
27 to go and work and be in a safe environment, and ended up dead.

28 Now, if these are not factual statements that I'm

1 making, he can refute what I'm saying, because the truth will
2 bear me out.

3 African-Americans are having a lot of difficulty
4 getting promoted within the system. There needs to be an answer
5 as to why.

6 I know you won't get the answer today. I know
7 that that's just part of the process that we're going through
8 here, but somewhere along the line, those questions need to be
9 answered.

10 And if this gentleman is going to be confirmed,
11 then he needs to be held accountable, and he needs to come back
12 in 30 days, 90 days, or some period of time to answer these
13 questions as to why these disparities exist.

14 I'm not saying don't confirm him at some point,
15 but certainly he's got to come back with a plan that's
16 functional and workable, and I don't see that. I haven't heard
17 it. And to talk about what we're going to do, look at his
18 staff, and that'll tell you what's been done.

19 If he's been there for 10 years of watch, either
20 directly or indirectly, because some of the time, the folks that
21 were directly in charge weren't there, because they were busy,
22 out trying to get other jobs, or they were busy doing other
23 things.

24 So, this man has been the man at the
25 institutions. So, all of these has been under him. And those
26 are some concerns that we have.

27 It's not anything personal. It's about business.
28 It's about the fact that he's going to be in a position over the

1 lives of people that there hasn't been any concern for, either
2 their hiring, their promotion, or the fact that they stay alive
3 or die.

4 And unfortunately for any person that would be in
5 that position, we will be here. We will be speaking to these
6 issues, and we are concerned.

7 We have addressed issues in Stockton at the youth
8 institution down there. We have raised complaints. Here's
9 newspaper articles. So, I'm not just here for the first time
10 speaking to the concerns that have taken place. There have been
11 a large number of complaints that we have received at the NAACP,
12 not only from Youth Authority, but from the Department of
13 Corrections overall.

14 And unfortunately, we're out here as volunteers,
15 overseeing people that are being paid 90, 80, 70 thousand
16 dollars a year that's supposed to take care of these things, and
17 we have to come out here and spend all of our time away from our
18 business or for free, trying to correct problems that should be
19 handled internally.

20 I certainly hope that you would give serious
21 consideration to the action that you're planning on taking, and
22 at least get some answers that make sense before this
23 individual's confirmed, if he's confirmed.

24 Thank you very much for your time and the
25 opportunity.

26 CHAIRMAN LOCKYER: Thank you, Mr. Bivens.

27 I'll note that there are also people present
28 indicating that they've had job, promotional, or hiring

1 problems. I don't know if anyone wants to comment. You're
2 entitled to if you want to make a comment, or we'll just
3 acknowledge it for the record either way.

4 MR. DOUGLAS: I have several questions for
5 Mr. Alarcon, and I would like for him to answer them.

6 CHAIRMAN LOCKYER: Why don't you identify
7 yourself for the record?

8 MR. DOUGLAS: Sure. My name is Dossey Douglas, a
9 group supervisor applicant. I applied in '92, '94 for a
10 position of group supervisor. Applied, went through the whole
11 analysis and everything, and was told that I could not get the
12 job simply because of my color vision.

13 My previous employment was with the United States
14 Navy. I was an air traffic controller and navigator.

15 I was told that I had to take Form D-15 test to
16 see the severity of my color discrimination -- I mean, my color
17 problem.

18 Once I took that, I was scored a moderate. Okay.
19 I investigated and looked at the state specifications and
20 Department of Youth Authority specification, which I have right
21 here. And the final recommendation states that ability pass or
22 be within mild to moderate for -- to get the job.

23 Once I submitted this paperwork to the Department
24 of Youth Authority, I was denied. Not only at Alarcon's level,
25 but State Personnel Board level.

26 I then wrote to Senator Greene. I wrote a letter
27 to Mr. Alarcon, which I have, and he said there was no textured
28 racism or discrimination against me in this matter.

1 I guess I only ask the question, if I qualify in
2 his own laws or ruling, why is that I don't have a job?

3 That's my question I have for you, Mr. Alarcon.

4 CHAIRMAN LOCKYER: Would you know about this
5 specific thing?

6 MR. ALARCON: No, Senator, I wouldn't.

7 I'd be happy to discuss with you after this
8 hearing, get more information about your situation, but I
9 couldn't respond to you here.

10 MR. DOUGLAS: Okay, Mr. Alarcon, I understand
11 that.

12 But I received a letter that I addressed the EEOC
13 at the Headquarters, and I addressed this matter to them because
14 I thought, at some point, it was textured.

15 I received a letter from you, or signed by you,
16 stating that there had not been any discrimination, and
17 everything was ran okay.

18 I am unhappy with that, and very much I see no
19 desire --

20 MR. ALARCON: You said this went to the State
21 Personnel Board, and they also denied you.

22 MR. DOUGLAS: Yes, and my doctor appeared also
23 and wrote a letter in my behalf, because he agreed that it was
24 some foul play in the matter, too. And this is a professional
25 doctor that has his license through -- license of optometry. And
26 once again, your doctors that you have do not have that
27 specialty to make that prognosis, to make that decision that I
28 was unsuitable.

1 Once again, I state the fact if I'm suitable to
2 become an air controller and navigator for the United States
3 Navy, I cannot see the problem as to why I wouldn't be
4 sufficient to do the job as a supervisor.

5 CHAIRMAN LOCKYER: Is this about your color
6 blindness, eye condition?

7 MR. DOUGLAS: Yes, sir.

8 CHAIRMAN LOCKYER: Senator Hughes on this.

9 SENATOR HUGHES: You used a terminology that I
10 didn't understand. You said your application was textured.

11 What does that mean? Is it part of the jargon
12 of the industry?

13 MR. DOUGLAS: That was used within the letter
14 that I received from the Department of Youth Authority.

15 Textured means that it wasn't fabricated against
16 me, meaning the fact that there was no foul play.

17 I find it to be foul play when I qualify in their
18 own writing, and still I do not have the job.

19 SENATOR HUGHES: Thank you.

20 CHAIRMAN LOCKYER: The most I think we can
21 suggest is that if Mr. Alarcon or appropriate staff would be
22 made available to review the file and give you a complete answer
23 after the hearing or tomorrow, Mr. Douglas, we'll do that.

24 MR. DOUGLAS: Okay.

25 One more question for Mr. Alarcon.

26 What is the Department standard for a person with
27 color vision deficiency? Do they have to pass the D-15 test,
28 meaning that there's no color vision deficiency, or can they do

1 the job within the standard of mild to moderate?

2 MR. ALARCON: There are number of standards that
3 have to be met, as you know, on the medical and physical. I'm
4 not an expert on color blindness, and what those standards might
5 be.

6 There might be somebody here in the audience that
7 is, and maybe we can check afterward and see what it is, unless
8 you're just testing me to see if I know. I don't know, if
9 you're asking that.

10 MR. DOUGLAS: Well, I do. I guess I've done my
11 research on it, and you have case laws that state that a person
12 with mild to moderate color vision deficiency can perform
13 essential job functions with little to no problems. And that's
14 on page 40 or 41 of this book here.

15 Also, page 93, the finding on recommendations
16 states that ability to pass or be within mild to moderate,
17 meaning the fact that you're not color blind or you fall within
18 the standards of mild to moderate.

19 And if this is so in your own writing, and I fall
20 within those standards, I find that to be to be a problem. I
21 don't think it'd take a doctor to see that that's a problem.

22 CHAIRMAN LOCKYER: Are you working now?

23 MR. DOUGLAS: Yes, I am.

24 CHAIRMAN LOCKYER: How long has this been?

25 MR. DOUGLAS: This has been going on ever since
26 November of 1994.

27 CHAIRMAN LOCKYER: If we could, Mr. Alarcon,
28 review the standards and let Mr. Douglas know.

1 We want to have his expert go through that with
2 you, and then let Ms. Michel, know either or both of you, what
3 the outcome is.

4 MR. DOUGLAS: One other question.

5 Also not now but maybe later, you can review the
6 paperwork that I have set up and see what's going on with it --

7 CHAIRMAN LOCKYER: Okay, well, hopefully your
8 department likes hiring people with initiative. You've got one
9 here.

10 [Laughter.]

11 MR. ALARCON: He definitely showed that; didn't
12 he?

13 CHAIRMAN LOCKYER: Thank you, sir.

14 MR. DOUGLAS: Thank you for your time.

15 CHAIRMAN LOCKYER: Is there anyone else that
16 hasn't had a chance to comment?

17 Mr. Alarcon, I want to ask you, in the time
18 you've served as Director, is there any particular decision that
19 stands out in your mind as the most difficult?

20 MR. ALARCON: I think any time that I make a
21 decision involving personnel, it's difficult. I make them.
22 That's my job, but I know that when I make those decisions, it's
23 is not just affecting that individual human being, but there are
24 other human beings attached to that person that are affected as
25 well. I think that's probably the most difficult job.

26 CHAIRMAN LOCKYER: I know what you mean.

27 SENATOR LEWIS: Mr. Alarcon, I'm looking at these
28 charts that were passed out. I guess some of the sources were

1 the State Personnel Board.

2 I guess my question after reviewing this is, just
3 in the last year or so, has there been a dramatic increase in
4 the percentage of minority employees that are getting
5 promotions?

6 MR. ALARCON: Yeah, I didn't really respond.

7 I never met Mr. Bivens, by the way, and I'm
8 looking forward to talking with him because that was all new
9 information.

10 But my record is just outstanding on promotions
11 and hires.

12 CHAIRMAN LOCKYER: What is your record?

13 MR. ALARCON: All you have to do is look at my --
14 my makeup of my staff.

15 Well, promotions, he made reference to
16 African-American. I believe this past year --

17 CHAIRMAN LOCKYER: How do you break it down? Are
18 there certain deputies, or assistants, or supervisors? As you
19 try to analyze your department, what are the relevant employment
20 pools?

21 MR. ALARCON: We've looked at it in a variety of
22 ways, you know, total labor force, management only, supervisors
23 only.

24 CHAIRMAN LOCKYER: What's management? What's
25 upper management?

26 MR. ALARCON: We have 65 to 70 positions out of
27 5400 that are designated manager. Probably half of those are
28 CEAs, Career Executive Assignments, and the rest are just

1 regular civil service managerial positions.

2 CHAIRMAN LOCKYER: What do you think the ethnic
3 breakdown in that pool might be?

4 MR. ALARCON: It might even be in those charts.
5 You know, I did not put those charts together. Those were
6 pulled from official records, State Personnel Board records.

7 CHAIRMAN LOCKYER: These are promotions, I think.

8 SENATOR LEWIS: No, there's an ethnic profile on
9 employees.

10 MR. ALARCON: If I can address, let me address
11 specifically African-American employees, if I might, since that
12 was one of the things brought up.

13 In the last year, I've made several key
14 appointments. Now, I've got to tell you, I make the
15 appointments because they are people that I believe can do the
16 job, not because of their ethnicity, or color of skin, or any
17 other criteria.

18 CHAIRMAN LOCKYER: That ought to be the first
19 consideration.

20 MR. ALARCON: And that is my first consideration,
21 is they can do the job.

22 But I've made four key African-American
23 appointments just with this last year. The number two person
24 over all institution and camps is an African-American female
25 that I Appointed.

26 The head of Parole Services for all of Southern
27 California I appointed this year is an African-American male.

28 The person who heads our Free Venture Program,

1 which is the program that we have in partnership with private
2 industry to work with these young people, get them jobs, and
3 hopefully transition them to the community, I appointed this
4 year, is an African-American male.

5 So, I don't quite understand --

6 CHAIRMAN LOCKYER: Out of how many appointments
7 that you made in total? I don't mean where you approve
8 something lower.

9 MR. ALARCON: That I directly have made?

10 CHAIRMAN LOCKYER: Yes, how many is it?

11 MR. ALARCON: Again, we have 65 to 70 positions.
12 I'd say --

13 CHAIRMAN LOCKYER: How many of those moved
14 around?

15 MR. ALARCON: There were a number that were
16 merely rotations and moves. I'd say maybe 20 of those. And
17 then maybe I personally made another 20. I'm just guessing off
18 the top of my head, in that neighborhood.

19 CHAIRMAN LOCKYER: And of the 20 you personally
20 made, you would --

21 MR. ALARCON: I could think of --

22 CHAIRMAN LOCKYER: -- you'd probably have to do
23 the research, but you have a feeling that you could defend --

24 MR. ALARCON: Yes.

25 CHAIRMAN LOCKYER: -- both competence and
26 diversity characteristics?

27 MR. ALARCON: Yes, sir.

28 CHAIRMAN LOCKYER: We'll probably, before we vote

1 on the floor, at least examine the numbers with you to make
2 sure.

3 MR. ALARCON: Excellent.

4 SENATOR LEWIS: According to the chart I have, it
5 appears that about 22 to 23 percent of the Youth Authority
6 employees are black. According to another one of the charts, it
7 says that of the promotions that were granted, in the last year
8 or so it was 24 or 25 percent black.

9 MR. ALARCON: I believe that's correct.

10 SENATOR LEWIS: One of the prior witnesses said
11 that the average wait for black employees for a promotion is 15
12 years. That the average wait for a white employee is two years.

13 MR. ALARCON: I've never heard those figures
14 before.

15 SENATOR LEWIS: That would be contradicted by
16 this chart unless there's been a huge upswing in minority
17 promotions in just the last year or so.

18 MR. ALARCON: And I can't believe that that's
19 the case, Senator, because our hiring intake has always been
20 pretty diverse, at least over the last decade. So, I can't
21 believe we've suddenly had a major surge.

22 MR. BIVENS: This chart does not say over the
23 last year. This speaks to the statistics from last year to
24 now.

25 It does not say that this took place in the last
26 year, nor does it address racial and sexual harassment cases in
27 the Department, either.

28 CHAIRMAN LOCKYER: Senator Hughes.

1 SENATOR HUGHES: I'm looking at two sets of
2 charts here. One says promotions from July '96 to December 31,
3 '96. You have 25.2 percent African-American out of 29, and 23.3
4 percent Hispanics out of 27.

5 When it comes to Educational Services, I note
6 it's proportionately greater.

7 Because I don't know enough about your
8 Department, and then you can inform me, you have 18.6 percent of
9 African-Americans promoted in Educational Services branches; as
10 compared to Hispanics, only 7.4 percent; and Asians, 11.1
11 percent.

12 Is it because these individuals are better
13 educated for the positions that they hold in the Educational
14 Branches Services? Is this the reason that more
15 African-Americans and more Asians were promoted?

16 I'm just trying to make heads or tails out of
17 these charts.

18 MR. ALARCON: That figure, 7 percent, are under
19 representation of Hispanics, is pretty startling for education.

20 I don't know what the answer is there. We need
21 to do a better job of recruiting, obviously, to advance more
22 Hispanics, more qualified Hispanics.

23 But on the other hand, we have led the state in
24 our representation of Hispanics in -- over all areas, and most
25 other areas, but education, for some reason, we do seem to be
26 below.

27 SENATOR HUGHES: No, but I wasn't saying that as
28 a negative. I was saying it also as a positive in terms of

1 African-Americans. You had a higher percentage, and I was a bit
2 surprised that you had less of a percentage of Asians.

3 MR. ALARCON: In the custody area?

4 SENATOR HUGHES: In the Educational Services.

5 I'm wondering, if you hire people in Educational
6 Services Branch, are they people who have more formal education?

7 MR. ALARCON: Well, obviously, they have to have
8 credentials.

9 SENATOR HUGHES: So that there are better
10 educated people in the Educational Services Branches as compared
11 with the other, proportionately?

12 MR. ALARCON: Generally that's the case.

13 SENATOR HUGHES: I'm asking. I'm not telling
14 you.

15 MR. ALARCON: No, generally that's the case,
16 because our teachers, obviously, are credentialled.

17 Our group supervisors only require high school
18 diploma and experience.

19 Now, youth counselors, on the other hand, does
20 require at least a minimum bachelor's degree. So, if we were
21 to separate youth counselors out, you would see that makeup as
22 being very comparable.

23 SENATOR HUGHES: Thank you.

24 MR. ALARCON: Thank you.

25 CHAIRMAN LOCKYER: Are there other questions from
26 Members?

27 With respect to the promotional practices, I
28 would hope that Mr. Hurdle and Ms. Michel will give us some

1 review, and perhaps you'll have a chance to talk specifically to
2 Mr. Bivens about the points that he's raised and get him as
3 complete a response as you can.

4 We are obligated to act on an appointment by the
5 Governor within one year of the date in which the appointment
6 was made. They stack up, and sort of planes are circling the
7 airport, waiting to land here.

8 We have until May 14th for Mr. Alarcon, which
9 means that voting next Monday, a week from today, would be the
10 last opportunity we have to act on this.

11 So, I hope we can look at that information --
12 looks like your support staff says yes, you can -- sometime
13 during this week, sir.

14 SENATOR AYALA: The suggestion is that it's put
15 over for a week?

16 CHAIRMAN LOCKYER: No. Rules needs to act today,
17 if we're prepared to, but the Floor, we won't do it this
18 Thursday. We'll wait until the last possible time so that every
19 opportunity to find relevant information will be exhausted,
20 other things.

21 Did you want to say anything in closing?

22 MR. ALARCON: No, thank you. I appreciate this
23 process. I know it's a lengthy one for everybody, and I think
24 it's an appropriate one. Thank you very much.

25 CHAIRMAN LOCKYER: Mr. Alarcon, many people who
26 have worked with you personally have commented in the most
27 complimentary ways possible.

28 MR. ALARCON: Thank you, Senator.

1 CHAIRMAN LOCKYER: And it's very hard for us,
2 hearing these disputes, to be a court and retry them, or try
3 them, or whatever.

4 But I think perhaps what we're seeing something
5 of is a general feeling of concern and disquiet with respect to
6 the Authority, that there seem to be a lot of problems there
7 that need attention.

8 I don't know that those are things for which you
9 personally should be held accountable, but you're hearing that,
10 I think, from a variety of individuals and Members that have
11 concerns.

12 So, personally, I am satisfied that you're
13 dedicated to making a difference with these wards, and want to
14 manage an agency that is a superlative place in which morale and
15 competency is rewarded, and Morale is reflected in that
16 environment.

17 What's the pleasure of the Committee?

18 SENATOR LEWIS: Move confirmation.

19 CHAIRMAN LOCKYER: We have a motion by Senator
20 Lewis to recommend confirming.

21 I also have this extra task of counting votes.
22 Call did roll.

23 SECRETARY WEBB: Senator Ayala.

24 SENATOR AYALA: Aye.

25 SECRETARY WEBB: Ayala Aye. Senator Brulte.

26 SENATOR BRULTE: Aye.

27 SECRETARY WEBB: Brulte Aye. Senator Hughes.
28 Senator Lewis.

1 SENATOR LEWIS: Aye.

2 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

3 CHAIRMAN LOCKYER: Aye.

4 SECRETARY WEBB: Lockyer Aye.

5 SENATOR HUGHES: Hughes Aye.

6 SECRETARY WEBB: Hughes Aye. Five to zero.

7 CHAIRMAN LOCKYER: Good luck, sir.

8 MR. ALARCON: Thank you very much. Thank you
9 all.

10 CHAIRMAN LOCKYER: We have to let our recorder
11 take a break for just a couple of minutes. Perhaps we could
12 just do bill referrals or something to give us a couple of
13 minutes here.

14 [Thereupon the Rules Committee
15 acted upon other agenda items.]

16 CHAIRMAN LOCKYER: This is a wonderful law firm
17 that does extraordinary work, and I can attest to that. But
18 other than that, what about this fellow?

19 SENATOR SHER: Mr. Chair, Members of the
20 Committee, it's my great pleasure and privilege to introduce to
21 you Mr. Laurence K. Gould, Jr., an outstanding member of the Bar
22 of the State of California.

23 As you have referenced, Senator Lockyer, a member
24 of the firm of Sheppard, Mullin, Richter and Hampton, one of the
25 premiere law firms in the state dealing with, among other
26 things, some of the most important commercial law issues that we
27 encounter in this state, a subject that I have dealt with
28 myself.

1 Mr. Gould was a student of mine. You won't
2 believe this --

3 CHAIRMAN LOCKYER: I was looking here for the
4 connection.

5 SENATOR SHER: Thirty years ago, 1971, and I had
6 been at Stanford Law School for a number of years even at that
7 time.

8 CHAIRMAN LOCKYER: What was his grade, do you
9 remember?

10 SENATOR SHER: We don't really put a lot of stake
11 on grades, and I don't know the answer to that, but I'm sure
12 that he did very well in the contracts course he took from me.
13 Therefore, he had an excellent beginning on his legal career,
14 not because of my course, but because of the great legal
15 education he got at Stanford Law School.

16 He has been an outstanding member of his
17 community, involved in many civic activities, both legal and
18 otherwise, other nonprofit activities, including the Pasadena
19 Historical Museum, the Los Angeles Music Center Opera Lounge,
20 the Los Angeles Central City Association.

21 We could not have a better candidate for Trustee
22 of the California State University than Mr. Gould. He is
23 respected in every way in his community and in the legal
24 profession.

25 So, as I say, it's my privilege and pleasure to
26 be able to introduce him to you today.

27 CHAIRMAN LOCKYER: I'm going to suggest, because
28 there are some serious issues, like student fees, affirmative

1 action, governance, and so on, that we take our five-minute
2 break now, if you don't mind, Mr. Gould. We'll resume as soon
3 as we come back.

4 MR. GOULD: Thank you very much.

5 [Thereupon a brief recess was taken.]

6 CHAIRMAN LOCKYER: Senator Schiff, did you want
7 to jump in here.

8 SENATOR SCHIFF: I wanted a chance to introduce
9 Larry Gould when you get to him.

10 CHAIRMAN LOCKYER: Well, he's a man that could
11 use more than one introduction. Why don't you come up and do
12 that.

13 Senator Sher was by, and I'm glad you know of his
14 presence as well. Go ahead, tell us whatever you want.

15 SENATOR SCHIFF: Just another illustration of how
16 we Stanford people stick together.

17 We realize that we're well out numbered by the
18 Cal people up here, so we have to do our best to stick together
19 when ever possible.

20 I'll ask you to forgive his attendance at Yale
21 University. That was definitely a drawback.

22 I wanted to just appear briefly, Mr. Chairman and
23 Members, to speak on behalf of Mr. Gould. I've had the chance
24 to sit down and get to know him a bit in the district. I've
25 heard from a lot of people that I very highly respect throughout
26 the community that I represent that have impressed upon me the
27 wonderful reputation that Mr. Gould has in our community as a
28 very thoughtful person, a very diligent person, hard working,

1 really who has the best interests of educating our
2 Californians.

3 He really comes with the most superlative
4 recommendation from a lot of people from different party
5 affiliations, different backgrounds in the district. I think
6 he'd make a tremendous asset to the Board of Trustees, and I
7 would urge your strong consideration of his candidacy.

8 CHAIRMAN LOCKYER: Thank you, Senator.

9 Well, it's your turn.

10 MR. GOULD: You didn't want to take the others
11 first? I could wait.

12 CHAIRMAN LOCKYER: No, go ahead.

13 MR. GOULD: For the record, I'd just like to
14 thank very much Senator Sher and Senator Schiff, both for being
15 here today and introducing me, and I appreciate it very much.
16 And I thank you for your kind comments.

17 SENATOR SCHIFF: You're on your own.

18 MR. GOULD: The only difference is, 30 years ago,
19 I only wish that Senator Sher had had those same high thoughts
20 in mind when he was creating my final exam in contracts class.

21 I'd just like to briefly summarize some of my
22 background. I've been a lawyer at Sheppard, Mullin, Richter and
23 Hampton in Los Angeles for 30 years. You might recognize us in
24 the Los Angeles area. We sponsor the News Hour with Jim Lehr on
25 PBS television down there.

26 One of the things that I've been involved with at
27 the firm is my colleagues, partners in the law firm, had elected
28 me to the Compensation Committee, which is the Compensation

1 Committee that determines the compensation of partners in a law
2 firm. When one is dealing with, if you will, divying up the pie
3 of 100 different individuals, it's a delicate and sensitive
4 issue. I was elected to two terms on that, re-elected to a
5 second, and re-elected to a third --

6 CHAIRMAN LOCKYER: They don't have term limits?

7 MR. GOULD: Then I was termed out.

8 So, I got off that assignment, but I think it
9 does exemplify the thoughts of the people having me, that my
10 colleagues looked at me as someone who was fair and thoughtful,
11 and could be able to do something that was -- would come up with
12 a sensible solution in a sensitive matter area.

13 In my practice area, I've been a partner there,
14 but I changed couple years ago my status to counsel so I could
15 have more time to be involved in civic affairs and public
16 service activities. I won't go through any of them. They're in
17 my resume which you have, except to point out one of the things
18 I've been involved with is the Della Martin Foundation, which
19 has endowed chairs for research at UCLA, at USC, at UC Irvine,
20 endowed a mental illness post-graduate doctoral fellowship at
21 Cal Tech, and all of those in higher education.

22 I've dealt with a lot of nonprofit, both mutual
23 benefit corporations and public benefit corporations in my
24 practice, and in addition in the tax area. And last year, when
25 I was asked to go on the Board of Trustees of the California
26 State University, what I wanted to determine for my own self
27 was, is it worth -- if this the area where I could best spend my
28 time in undertaking affairs in the public service area.

1 I reviewed CSU Board. I was very impressed with
2 the leadership team which Barry Munitz and the Board of Trustees
3 have. I felt it was a very important area to be involved with.

4 One of the areas I've been involved with, as I
5 mentioned, is the nonprofit area, where I confirmed one of the
6 areas I'd hoped to be involved with on the Board of Trustees is
7 trying to increase fundraising efforts of the CSU to get more
8 public-private partnerships, to bring in more financial
9 resources to the CSU system.

10 I know that you have very long agenda today. I
11 would look at this whole opportunity as being basically one of a
12 stewardship in which, at the end of my term, if confirmed, I
13 could look back on it and say that I made a significant
14 contribution in trying to improve higher education in
15 California.

16 And with that, I would open it up for questions.
17 I know the hour's late.

18 CHAIRMAN LOCKYER: Student fees is an issue we
19 have regularly asked Trustees to try to determine their approach
20 and attitude with respect to the matter.

21 Do you have any general philosophy?

22 MR. GOULD: My general philosophy in that lies
23 basically in the area with the basic premise of the Master Plan
24 for Education in California, which is that after high school,
25 students ought to have the opportunity to go to college, and
26 that it ought to be accessible and affordable.

27 The average profile of the students that we have
28 CSU is such that our average student is 27 years of age. The

1 average student works 30 hours a week. Many of them are
2 supporting their own family, or their parents or children.
3 They're all on very tight budgets, and I think we ought to do
4 everything we can to keep the CSU system as affordable as
5 possible.

6 And I'm very pleased in the last two years, the
7 Legislature has seen -- and Governor -- have both seen fit to
8 not have any fee increase allowed.

9 CHAIRMAN LOCKYER: Has there been a controversy
10 before your Board about the affirmative action policies?

11 MR. GOULD: What the Board has done is, when the
12 whole dialogue began, basically the Board reviewed all of our
13 policies to see what the nature of our policies were. We wanted
14 to make sure that all students have equal access for equal
15 opportunity at the CSU system.

16 We reviewed our policies and determined that our
17 policies are those which have open access and the like. And
18 with regard to that, in the last election, having reviewed our
19 policies and determining that none of ours -- all of ours were
20 those of being open, to open access of all students equally,
21 our Board officially took no position either for or against, and
22 took no role in that.

23 CHAIRMAN LOCKYER: Other questions? Senator
24 Hughes.

25 SENATOR HUGHES: Mr. Gould, your institutions are
26 the ones that train the teachers who go out and teach in the
27 public schools.

28 What do you think should be the role of the CSU

1 system in terms of interacting with schools to upgrade the
2 quality of their education?

3 MR. GOULD: I think they have to be working
4 together closely on that, because, as you pointed out, CSU
5 produces almost half of the teachers in the State of
6 California. And we have to work closer with the teachers to
7 make sure that the teacher performance improves, that you have a
8 complete unity between K-12 and the CSU system, or the remaining
9 community colleges and higher levels, so that the students that
10 graduate from the high schools of California are prepared and
11 can deal well in the university area.

12 We need to improve our teaching in California, I
13 think, and we have found in the University, in the California
14 State University, approximately 40 or 50 percent of the students
15 need additional help. We need to make sure that the teachers
16 are doing better in the earlier grades, and that the students
17 are doing better in earlier grades.

18 SENATOR HUGHES: How closely are the CSU campuses
19 working with the Superintendent of Public Instruction to see
20 that there's a decrease in the need for remedial education as
21 these students want to get into higher education?

22 MR. GOULD: As to the exact details of it, I
23 can't say. But overall, all what we are doing is working and
24 setting standards so that at lower levels, at fourth grade, at
25 sixth grade, at eighth grade, with regard to reading skills,
26 with regard to mathematic skills, what a student ought to know
27 at eighth grade and at high school, and what proficiency they
28 ought to have so that when they go on, they can take full

1 advantage at the higher education level.

2 SENATOR HUGHES: How many institutions in the
3 system are giving opportunities for high school students to take
4 courses at the CSU campuses? I know that some of them --

5 MR. GOULD: A very large number. I do not know
6 exactly the exact number on the 22 existing campuses and that
7 one that's in plan. But I know of large amounts that are.

8 And some, like at Cal State Los Angeles, at Cal
9 Poly Pomona, I know each are involved with different high school
10 situations, and involved with promoting those efforts.

11 As to the exact number, I think it's very large.

12 SENATOR HUGHES: Thank you.

13 CHAIRMAN LOCKYER: Other questions? What's the
14 pleasure?

15 SENATOR AYALA: I'll move.

16 CHAIRMAN LOCKYER: We have a motion by Senator
17 Ayala that we recommend confirmation --

18 May I record the four of us present as voting
19 Aye? That'll be the order.

20 [Senator Brulte later added his
21 Aye vote, making the final vote
22 5-0 for confirmation.]

23 MR. GOULD: Thank you very much. I look forward
24 to working with you in the future.

25 CHAIRMAN LOCKYER: Mr. Trigg, we've all had an
26 opportunity to review the record from the prior hearing.

27 Senator Johnston wanted to pop in, but I don't
28 think that may be necessary.

1 Were there any additional questions Members had
2 wished to ask of Mr. Trigg, who's a member of the State Board of
3 Education? All Right.

4 SENATOR LEWIS: Move confirmation.

5 CHAIRMAN LOCKYER: We have a motion to confirm.
6 May I record the four of us? Okay.

7 [Senator Brulte later added his
8 Aye vote, making the final vote
9 5-0 for confirmation.]

10 MR. TRIGG: Thank you very much. I appreciate
11 your confidence.

12 CHAIRMAN LOCKYER: Thanks. Good luck.
13 All right, now Mr. Bishop. We're getting there.
14 Do you want to start with any kind of opening
15 comment?

16 MR. BISHOP: With your permission, Mr. Chairman,
17 I'd like to make a very brief opening statement.

18 CHAIRMAN LOCKYER: You can make a long one.

19 MR. BISHOP: I was appointed to the position of
20 Commissioner of Corporations not quite a year ago. Each day
21 since then, I've felt keenly the tremendous responsibility that
22 I have undertaken.

23 This is the responsibility to carry out and
24 enforce all the laws under the Department's jurisdiction as
25 objectively and as evenly as I possibly can.

26 As Commissioner of Corporations, I am charged
27 with the oversight of ten different laws. Virtually every
28 Californian is affected by the industries that the Department of

1 Corporations regulates. These industries include: the
2 securities industry, the franchise investment industry, the
3 escrow industry, the mortgage banking industry, and the managed
4 care industry.

5 So, whether your buying a stock, taking out a
6 mortgage, or getting health care from an HMO, you have an
7 interest in how well the Department of Corporations is doing its
8 job.

9 In the last few months, I believe that the
10 Department of Corporations has taken significant steps to
11 strengthen its oversight over all of these laws.

12 California in the last ten years has witnessed a
13 revolution in its health care delivery system. No revolution of
14 this magnitude occurs without controversy. Every decision that
15 I am called upon to make in the health care area involves strong
16 and competing interests. So, in making these decisions, I try
17 to listen to and consider these interests.

18 In this environment, however, it's simply not
19 possible to make a decision without drawing criticism from one
20 interest group or another. That is why I believe it is
21 absolutely essential that the Department apply the law in as
22 thoughtful, and as fair, and as balanced a manner as it possibly
23 can.

24 Since I became Commissioner less than one year
25 ago, I believe that the Department has strengthened its
26 oversight of the managed care industry. We have improved our
27 handling of consumer complaints. We have also stepped up
28 significantly our enforcement actions against plans.

1 There are many challenges ahead for the
2 Department of Corporations, and I want you to know,
3 Mr. Chairman, that I am up to the job. And I look forward to
4 working with each of you in meeting these challenges.

5 CHAIRMAN LOCKYER: I think there are probably a
6 lot of questions, and I expect a significant amount of
7 testimony. So, why don't I just open it up in that way.

8 Senator Rosenthal, did you want to start?

9 SENATOR ROSENTHAL: Thank you very much,
10 Mr. Chairman, Members, for permitting me the opportunity to
11 participate in this confirmation hearing.

12 As Chair of the Insurance Committee, which has
13 jurisdiction over the HMO issues, I have strong interest in the
14 job of the Commissioner. I have a brief opening observation,
15 and then some questions that I would like to ask.

16 When the Governor appointed Keith Bishop as CDC
17 Commissioner, he praised him as an expert in securities and
18 corporation law. He noted Mr. Bishop had authored a book on
19 Nevada corporation law and served on a Senate commission related
20 to corporations and securities.

21 However, the Governor was silent on the issue of
22 Mr. Bishop's health care experience. The DOC Commissioner is
23 the state's top watch dog for HMOs, and I think that health care
24 regulation is the most important aspect of the Commissioner's
25 job.

26 One of my colleagues on the other side of the
27 aisle has openly expressed his concern that Commissioner Bishop
28 may lack vision as to what is necessary to achieve quality in

1 the health care area.

2 In addition, the Chair of the Governor's HMO Task
3 Force has indicated his view that HMOs should be regulated by a
4 health care expert.

5 So, I'm not confident that a securities attorney
6 is the best person for the job. But let's see as we pursue some
7 of the questions that I would like to raise.

8 Mr. Bishop, you're aware that there are more than
9 a hundred bills dealing specifically with HMOs. You've
10 indicated that some of these bills appear to be misguided, and
11 that the DOC does not need new laws to do its job.

12 You've been quoted in the Wall Street Journal at
13 stating that a handful of legislators are simply, quote,
14 "looking for something to do," end quote, to appease
15 constituents frightened about HMOs.

16 Do you believe there's no reason for Legislators
17 to be concerned about how HMOs treat their patients?

18 MR. BISHOP: Senator, I would like to say that I
19 regret that that quote was taken out of a long interview. It
20 certainly did not convey my full views, which I expressed.

21 I believe that the Legislature absolutely has a
22 strong interest in the state of HMO regulation in California.
23 We are in the midst of a very, very dynamic change in terms of
24 the health care delivery system. And it's the Legislature's
25 responsibility to guide the industry and the people of
26 California through this change.

27 So, I certainly believe that there is a very
28 strong and important role for the Legislature in shaping this

1 health care revolution.

2 SENATOR ROSENTHAL: As a matter of fact, I really
3 believe we would not have all HMO bills if the public had
4 greater confidence in your oversight of HMOs.

5 Do you agree to that?

6 MR. BISHOP: I share your concern. I believe
7 that the managed care industry, in order to survive, has to have
8 the confidence of the public, both in the industry and in the
9 regulator.

10 Since becoming Commissioner, I have taken a
11 number of steps, I believe, to improve the Department's
12 oversight of the HMO industry. I don't believe we're done, but
13 I believe we are moving forcefully in the right
14 direction.

15 SENATOR ROSENTHAL: Let me just deal now with the
16 DOC's ombudsman program. I understand that you're in the
17 process of hiring an ombudsperson as required by my bill, SB
18 1936. I'm disappointed that this consumer protection position
19 is still vacant. That was last year's bill.

20 I have two questions for you about the DOC
21 ombudsperson. At your insistence, my bill deleted the duties of
22 ombudsperson and left the duties to be determined by the
23 Commissioner. My bill called for the ombudsperson to: first,
24 oversee DOC's 1-800 consumer hotline to help resolve complaints;
25 two, counsel and enrollees on their rights and responsibilities;
26 help enrollees navigate through the HMO grievance systems and
27 the DOC's appeals process; and distribute grievance system
28 materials developed by HMOs and DOC; and coordinate with other

1 government and private health care ombuds programs.

2 What duties do you intend to assign the
3 ombudsperson?

4 MR. BISHOP: Well, I am disappointed that the
5 position is not filled. We took every step we could to fill it.
6 We circulated a job opportunity bulletin, and we did receive a
7 very small number of applicants.

8 Rather than do the expedient thing, which would
9 be to fill the position from those applicants, in looking at
10 their qualifications, I thought it was important to get somebody
11 who was fully qualified for that position.

12 So, we rewrote the job opportunity bulletin,
13 recirculated it, expanded the classification in which we were
14 making eligible to apply to this position. So, I wanted to make
15 sure that we were getting the best possible person so that I
16 could carry out your intent in creating this ombudsperson
17 position.

18 Since becoming Commissioner, I have made the
19 handling of consumer complaints one of my top priorities in the
20 health care area. We've taken number of steps to improve the
21 way the Department handles those complaints.

22 The ombudsperson I see as somebody who will not
23 duplicate the existing consumer services unit that we have, but
24 somebody who will assist consumers and enrollees in dealing with
25 the plan's grievance system and with the Department's handling
26 of consumer complaints. Somebody who can break through problems
27 when they arise in our own consumer services unit.

28 And one other thing that I think is important is,

1 I think people ought to know more about the Department of
2 Corporations and their handling of consumer complaints. I see a
3 role for this ombudsperson in spreading the word, in educating
4 consumers about our 800 number and when to access it, and what
5 it can do for them.

6 SENATOR ROSENTHAL: There was nobody in the
7 Department that was concerned about consumer affairs that you
8 could have assigned to that ombudsperson's job?

9 MR. BISHOP: Well, we have a small department.
10 And I was focusing my resources on speeding up our handling of
11 complaints, because we did face a big backlog when I came into
12 office, and adding resources to processing those complaints.

13 Frankly, I thought we would get the position
14 filled on the first go around with the job opportunity bulletin.
15 I misjudged that. I thought we would get the right person.

16 And I could have appointed somebody out of that,
17 but I wanted to respect your intent and fill the position with
18 the best possible person.

19 SENATOR ROSENTHAL: You know, the Department of
20 Health Services, the Department of Insurance, and the Department
21 of Aging direct their ombudsperson to advocate on behalf of
22 consumers.

23 In contrast, last year when you opposed my bill,
24 you did so because you objected to being an advocate for
25 enrollees. I disagree with that position. I think that
26 California needs an HMO ombudsperson who will advocate on behalf
27 of consumer interests.

28 Will you direct your ombudsperson to be a

1 consumer advocate?

2 MR. BISHOP: Well, as a regulator of the health
3 plans and in handling these complaints, we have to get both
4 sides of the story.

5 We get complaints. They come in. We have to
6 look at what the complainant is saying, and then we have to go
7 and find out the story from the plan. Then we have to look at
8 the law. We sometimes will need to consult with medical
9 experts.

10 It is a process that we have to be fair to both
11 the enrollee and to the plans.

12 I do believe that the ombudsperson can advocate
13 for the consumer in terms of negotiating through this process,
14 so that they understand how to make the system work for them.
15 But we do have apply the law, and apply the law fairly, and
16 evenly, and as balanced a manner as we possibly can.

17 CHAIRMAN LOCKYER: Senator, let me interrupt on
18 this point.

19 So, it's your understanding that the law requires
20 you to be more adjudicatory when complaints come in rather than
21 an advocate for any party?

22 MR. BISHOP: I believe that the law, the
23 Knox-Keene Act, which is the law that regulates managed care
24 plans in California, is there for the protection of consumers.
25 So, in making decisions, I believe that the law is for consumer
26 protection.

27 But in handling complaints, we have to look at
28 the complaints, and look at how the plan has responded to this

1 individual's situation, look at the medical facts, and look at
2 what the law requires the plans to do, and make a decision about
3 what we think the right result should be.

4 CHAIRMAN LOCKYER: If I understand that, you have
5 specific complaints where you really are more of a judge, and
6 general responsibilities under Knox-Keene that are consumer
7 oriented?

8 MR. BISHOP: Well, I think the law is there for
9 the protection of the consumer.

10 When we get these complaints, you know, we look
11 at whether -- and we interpret the law with that frame of
12 reference.

13 CHAIRMAN LOCKYER: Do you care about consumers?

14 MR. BISHOP: I absolutely care about consumers.
15 Every day I read personally complaints from consumers. I get
16 calls at home from consumers.

17 CHAIRMAN LOCKYER: Is your number listed?

18 MR. BISHOP: You don't want to know. No, I do
19 get calls at home. I talk to my people late at night about
20 consumer complaints.

21 CHAIRMAN LOCKYER: So, you think this is an
22 active part of your responsibilities?

23 MR. BISHOP: I believe it is very important for
24 me to understand how the Department is doing its job, how we are
25 serving the people that we are, I think, by law required to
26 serve.

27 And you know, these complaints, when you read
28 them every day, you realize the magnitude of the responsibility.

1 SENATOR ROSENTHAL: A bill which I carried in
2 1995, SB 689, directs the DOC to investigate and take
3 enforcement action against HMOs in response to enrollee
4 complaints. That's the law.

5 In your information submission to this Committee,
6 you've indicated that, quote, "Enforcement actions taken by the
7 Department which are based on a single incident are the
8 exception rather than the rule."

9 In other words, you have refused to impose
10 penalties in response to individual consumer complaints, no
11 matter how egregious the case. I'm troubled by your
12 enforcement policy in light of the serious nature of consumer
13 complaints that I have received, and that have been reported in
14 the press, and that we have reported to you.

15 MR. BISHOP: Senator, I believe that I have
16 personally directed that complaints that have come to the
17 Department of Corporations that have come to my attention, I've
18 directed that they be referred to our enforcement division.

19 I believe that our recent enforcement actions
20 were generated in part by individual complaints that arose with
21 respect to a plan. That's what sparked our initial
22 investigation in which we sent out on-site investigators to
23 follow-up on a number of individual complaints.

24 Then we took a very stern enforcement action
25 based upon those consumer complaints.

26 What we're looking for is not only the individual
27 case, but we're looking for systemic problems. We have to make
28 decisions about taking enforcement action about the severity of

1 the violation, the probability that we'll succeed, the amount of
2 resources that we have available for enforcement.

3 I will not hesitate to take action in the
4 appropriate case based on an individual consumer complaint.

5 SENATOR ROSENTHAL: Is it your position that none
6 of the individual complaints that have come in on your watch
7 have been serious enough to warrant DOC imposing a penalty?

8 MR. BISHOP: No, Senator. I believe that the
9 recent enforcement action that we took against Western Dental
10 arose directly from individual complaints that came to my
11 personal attention.

12 SENATOR ROSENTHAL: Western Dental?

13 MR. BISHOP: Yes, Western Dental plan.

14 CHAIRMAN LOCKYER: Is that the one in the
15 Sacramento area?

16 MR. BISHOP: It's statewide.

17 CHAIRMAN LOCKYER: If it's the one I'm thinking
18 of in Sacramento, it's junk. They ought to be out of business.

19 SENATOR ROSENTHAL: There have been no penalties,
20 though, against HMOs for serious --

21 MR. BISHOP: Senator, in the case of Western
22 Dental, individual complaints came to my attention. I directed
23 my enforcement staff in the fall of 1996 to commence an
24 investigation which involved hiring a dental consultant and
25 following up on on-site investigation.

26 We worked that case for seven months to get the
27 evidence in order. Then I filed a civil action against the
28 plan, seeking to place the plan into receivership and a \$3

1 million fine. That is a substantial fine that arose out of
2 individual complaints.

3 SENATOR ROSENTHAL: Have there been none in
4 health care HMOs that would require a fine?

5 MR. BISHOP: The Western Dental case is a case --

6 SENATOR ROSENTHAL: Aside from dental.

7 MR. BISHOP: There have been other cases that I
8 referred to enforcement to get their opinion on whether to take
9 action. Based on their advice, I have decided not to take
10 action.

11 I certainly believe that there will be additional
12 enforcement actions.

13 I do have to say that these -- to bring an
14 enforcement action takes quite a bit of investigation to make --
15 to build the evidence to bring the case. It does take some
16 time, and I've only been in office less than a year.

17 SENATOR ROSENTHAL: The next question, your
18 predecessor, Commissioner Mendoza, undertook a bold quality of
19 care initiative which seems to have fallen by the wayside under
20 your leadership.

21 As you know, part of the public concern about the
22 DOC is that it doesn't do enough to ensure that HMOs provide
23 quality health care.

24 I noticed in the minutes of your HMO Advisory
25 Committee meetings, Dr. Seymour Levine urging you resurrect the
26 quality of care initiative.

27 Are you willing to commit to fully reviving the
28 DOC quality of care initiative?

1 MR. BISHOP: I am very concerned about quality of
2 care, and I believe that's underlined some of the enforcement
3 actions we've taken.

4 In the case of the dental care area, I just
5 received a couple of weeks ago a report from the subcommittee of
6 my Health Care Advisory Committee on quality of dental care.
7 Based upon that report, I've called for a public hearing to be
8 held at the end of this month on that quality of care report.

9 I'm very interested in the quality of care issues
10 because I believe that's central to the Knox-Keene Act.

11 SENATOR ROSENTHAL: The Governor's HMO Task
12 Force, the Governor's Office has agreed to recommend that my
13 bill, SB 406, my bill to remove HMO from DOC jurisdiction to a
14 new HMO board in the Department of Consumer Affairs, should be
15 subject to a fast track review by the Governor's HMO Task Force.

16 The Governor's position endorsing a fast track
17 review is different from a position that you took in a letter
18 sent to me, which I understand was sent by mistake.

19 For the record, do you confirm the
20 administration's position on SB 406 is that it should be subject
21 to a fast track review by the HMO Task Force?

22 CHAIRMAN LOCKYER: Let me insert, that applies to
23 whatever ideas there are about governance. It might not just
24 be -- there's the Department of Insurance, and so on. There's
25 various alternatives.

26 MR. BISHOP: Let me say this. I respect the
27 independence of the Task Force. It is a multi-member body
28 appointed by both the Legislature and the Governor's Office.

1 The Department of Corporations will do
2 everything it can to support the activities of the Task Force,
3 and to help them in reaching any of the conclusions or
4 undertaking any of the research that they need. So, if they've
5 made that decision, we will support it.

6 CHAIRMAN LOCKYER: Has the Task Force addressed
7 that? They've had one meeting so far and another one tomorrow,
8 is it?

9 MR. BISHOP: Day after tomorrow.

10 CHAIRMAN LOCKYER: Have they made any
11 determination as to their work schedule, or is that premature?

12 MR. BISHOP: At this time, I think it's premature
13 in terms of formal agenda action. The first meeting was really
14 an organizational meeting.

15 CHAIRMAN LOCKYER: Wrong answer. This has got to
16 get done before August 15th.

17 MR. BISHOP: Senator, I will do everything I can
18 to make sure that that happens.

19 SENATOR ROSENTHAL: My final concern --

20 CHAIRMAN LOCKYER: The whole task may not be
21 completed, we understand that, but the governance segment, we
22 need to hear from you and the Task Force by the middle of
23 August.

24 MR. BISHOP: I understand that, and that's what I
25 was trying to say.

26 CHAIRMAN LOCKYER: On the same topic, it really
27 raises questions about whether you're managing your 300 people
28 when your deputy writes a letter objecting, or suggesting,

1 different committee jurisdictions in the Senate.

2 Sir, I don't give a damn what your opinion or
3 your deputy's opinions are about what committee ought to hear
4 what bills. That's our business; that's our job. And I deem it
5 highly inappropriate for someone directly under your
6 jurisdiction to be writing letters suggesting that the
7 jurisdiction of various committees should be changed.

8 MR. BISHOP: I understand that, and I will do
9 whatever it takes to make sure that it doesn't happen again.

10 CHAIRMAN LOCKYER: I talked to the Governor's
11 Office about it, so I'm satisfied with their indications that it
12 was inappropriate.

13 But it raises a question of what kind of
14 management you're providing for your appointees.

15 SENATOR HUGHES: Mr. Bishop recommended --

16 CHAIRMAN LOCKYER: His deputy did.

17 MR. BISHOP: Just as a point of correction, it
18 was not an appointee. It was a line person.

19 CHAIRMAN LOCKYER: A CEA?

20 MR. BISHOP: No, it was not a CEA.

21 CHAIRMAN LOCKYER: Not a CEA?

22 MR. BISHOP: It was below. The letter was signed
23 by a counsel in the Office of Policy, but not the CEA who was
24 the head of the Office of Policy.

25 CHAIRMAN LOCKYER: What was the gentleman's name?

26 MR. BISHOP: Tim Laboss, but I don't want to say
27 that --

28 CHAIRMAN LOCKYER: What's his title?

1 MR. BISHOP: I think it's counsel.

2 I'm not saying that to diminish it. It was a
3 mistake, and I understand your --

4 CHAIRMAN LOCKYER: It was not a person you hired
5 for that particular job. He was pre-existing personnel, I
6 believe?

7 MR. BISHOP: Yes, and he was not a CEA.

8 CHAIRMAN LOCKYER: The Governor's Office thinks
9 he's CEA. Maybe they need to find out he's not.

10 MR. BISHOP: I'm sorry?

11 CHAIRMAN LOCKYER: The Governor's Office thinks
12 that he's CEA, because that's what they communicated to me. So,
13 maybe they should specifically, Mr. Dunn, learn that he's not in
14 that job and probably shouldn't be.

15 SENATOR ROSENTHAL: I have one final concern, and
16 that's regarding HMO mergers.

17 Under California law, if two health insurance
18 companies want to merge, the Insurance Commissioner must first
19 find that the merger would not substantially lessen competition
20 or create a monopoly.

21 There's no comparable requirement in California
22 law for HMO mergers, although in other states where HMOs are
23 generally regulated by insurance departments, this model
24 anti-trust test may apply. So, we seem to have loophole in
25 California law with regard to HMO mergers.

26 You've testified before my committee that you do
27 not think the DOC Commissioner should have responsibility for
28 HMO anti-trust issues.

1 In contrast, the Attorney General's
2 representative testified that the Department of Justice would
3 not object to legislation increasing its responsibility for
4 reviewing the anti-competitive impacts of HMO mergers if the
5 Attorney General was reimbursed for review costs.

6 Do you object to the Attorney General taking on
7 this anti-trust responsibility?

8 MR. BISHOP: I believe that the Attorney General
9 and the U.S. Federal Trade Commission and U.S. Department of
10 Justice already have this jurisdiction.

11 In the case of the recent PacifiCare FHP
12 transaction, that was subject to a specific second request by
13 the Federal Trade Commission, and the Federal Trade Commission
14 issued a letter closing the case without any action.

15 During the pendency of that merger, I was in
16 contact with the California Attorney General's office. And the
17 California Attorney General's office also raised no objection.

18 From my perspective, there are enforcement --
19 competent enforcement agencies with jurisdiction over the
20 anti-trust laws to address these issues.

21 I certainly believe in working cooperatively with
22 those agencies, and as I said, I was in contact, personally in
23 contact with members of the Attorney General's staff during the
24 pendency of the transactions. And then after the transactions,
25 I met with members of the Attorney General's staff to discuss
26 further their approach to anti-trust enforcement in California.

27 CHAIRMAN LOCKYER: Senator Lewis.

28 SENATOR LEWIS: If your role relative to the

1 mergers does not include looking into anti-trust matters, can
2 you spell out for the Committee what your role as Commissioner
3 is with regard to those mergers?

4 MR. BISHOP: I think our responsibility is
5 basically to look at whether or not the proposed transaction
6 would result in a violation of the Knox-Keene Act. And in the
7 case of the FHP PacifiCare transaction, what was actually going
8 on was a transaction by the parent corporations of the two plans
9 that we license.

10 So, what I repeatedly made clear to the plans
11 involved is that, just because a financial transaction, a change
12 of ownership at the parent level was occurring, that there
13 should be absolutely no negative impact on the enrollees of the
14 plans.

15 Following our approval of the transaction, there
16 was this change of ownership. However, the plans continue to be
17 separately licensed and must continue to be operated separately
18 until they get further approval from the Department of
19 Corporations.

20 In looking at the mergers, we looked at issues of
21 whether or not the plans would continue to provide accessible
22 care, continuity of care, and quality of care.

23 I would say with respect to these transactions,
24 the PacifiCare and FHP transaction particularly, we were the
25 last regulator in the nation to approve the transaction. The
26 transaction had been reviewed and not objected to by the Federal
27 Trade Commission. Seven or eight other states had approved the
28 transaction, including the California Department of Insurance.

1 We were the last regulator.

2 In approving it, we were the only regulator to
3 insist on specific conditions, which we call undertakings, by
4 the plans to ensure that principle that I enunciated, that
5 there'd be no adverse impact on enrollees, would be maintained.

6 SENATOR LEWIS: I wanted ask you, you brought up
7 the case of Western Dental in terms of your enforcement action.

8 How many subscribers does Western Dental have,
9 and how many consumer complaints did you have against them?

10 MR. BISHOP: We have -- they have, I believe,
11 230,000 enrollees in the plan, and I can get you the exact
12 number.

13 We had actually last year a relatively small
14 number of complaints that were filed against the plan. I think
15 there was couple of reasons. One is our 1-800 number had only
16 been in operation for part of the time. And our -- it was not
17 as well known amongst the public as it should have been.

18 Nonetheless, based on the complaints that did
19 come to our attention, we did start the investigation.

20 SENATOR LEWIS: Do you have a rough idea of what
21 the number of complaints would be?

22 MR. BISHOP: It was, I believe, less than 20.

23 SENATOR LEWIS: Less than 20 out of 230,000?

24 MR. BISHOP: Enrollees, yes.

25 SENATOR LEWIS: And that triggered an
26 investigation which resulted in kind of the death penalty for
27 the plan, I guess?

28 MR. BISHOP: We looked at not only the

1 investigation, but we went back and reviewed the medical surveys
2 that we had conducted over the last several years. And what we
3 found was basically a consistent failure to address deficiencies
4 that the Department had noted. And it just became apparent to
5 me that these deficiencies were not going to be corrected unless
6 we took dramatic action to ensure that they would be.

7 SENATOR LEWIS: What was the nature of these
8 deficiencies? What was the most common complaint?

9 MR. BISHOP: Well, there was a variety of
10 complaints. There was bad care. People were being given dental
11 care. They'd come in with healthy teeth, and they would be
12 given fillings which they didn't need, and then they'd have
13 problems with the fillings that they didn't need in the first
14 place.

15 There was excessive waiting times, both to get in
16 to the chair, and once you were in the chair. People undergoing
17 dental surgery were sometimes waiting for hours in the chair in
18 the midst of surgery.

19 There was a large number of problems like this
20 that we identified, both in our medical survey and in our
21 complaint investigation.

22 SENATOR LEWIS: Did I read somewhere that one of
23 the complaints was that they were performing too many procedures
24 at one sitting?

25 MR. BISHOP: Yes, it's not good dental practice
26 to operate on all four quadrants of the mouth, and so some of
27 that was occurring as well.

28 SENATOR LEWIS: Any questions from Members of the

1 Committee? Senator Ayala.

2 SENATOR AYALA: Just one question.

3 In my office I indicated that some of the
4 complaints I was getting was that you were not aggressive enough
5 with the violators.

6 You indicated that you had a record of strong
7 enforcement of the laws, HMOs and whatever. And the letter you
8 sent to me, I don't recall what it said. Tell me again what the
9 letter said in terms of how many of these people you have given
10 a penalty fee and so forth.

11 You indicated to me you had a strong record of
12 doing that.

13 MR. BISHOP: In the ten or eleven months that I
14 have been Commissioner, I have fined and collected more in fines
15 than any other commissioner in the last ten years.

16 And I believe that the collection number is
17 particularly significant because the plans are not putting up a
18 fight. They realize that we have very strong cases.

19 I have taken action against 80 plans for failing
20 to disclose the 1-800 number that the Department operates. I
21 feel that that is a particularly important violation, because
22 what happens is, people don't know where to go when they have
23 complaints. Then we don't get raw data to bring other
24 enforcement actions. And since bringing that action, in the
25 first wave of that action, which was in January, we saw the
26 number of phone calls to our 1-800 number nearly double in
27 February, which was a short month.

28 I've also taken action against a plan, fined them

1 \$100,000 for a false and misleading advertisement in the Wall
2 Street Journal. And while that fine was significant, perhaps
3 more economically significant was that we made them print a
4 retraction, and we delayed the start of their new medical
5 savings account product for several months until they could
6 straighten out their problems. That put them, obviously, at a
7 competitive disadvantage because the medical savings account
8 program is a limited time pilot program.

9 SENATOR AYALA: What is the average tenure of a
10 Commissioner of Corporations?

11 MR. BISHOP: Off hand, I think it's two or three
12 years. I haven't actually studied it, but that's my guess.

13 SENATOR AYALA: How long have you been in the
14 office now?

15 MR. BISHOP: It's going on, I guess, eleven
16 months.

17 SENATOR AYALA: Eleven months, you have had more
18 people subjected to fines than any other commissioner in their
19 term of office?

20 MR. BISHOP: Yes, Senator. And I've collected
21 more money than any other commissioner.

22 SENATOR AYALA: Thank you.

23 SENATOR LEWIS: You mentioned that one of your
24 priorities has been to try to do something about the backlog of
25 consumer complaints.

26 What success have you had with that?

27 MR. BISHOP: When I came in, we had a backlog of
28 complaints over 60 days that was in excess of, I believe it was

1 1200. That concerned me greatly. So, what I realized we had to
2 do is to expand dramatically the number of medical consultants
3 available to review consumer complaints.

4 Today we have more than eight times the number of
5 medical consultants available to us than we did when I came into
6 office.

7 I also hired on a temporary basis administrative
8 law judges to provide legal expertise, to review consumer
9 complaints. We have cut the backlog of consumer complaints over
10 60 days by over 70 percent in the time that I've been in
11 office.

12 We're still, in my estimation, not where we want
13 to be. I want to have zero complaints over 60 days. We're
14 getting closer, although with the 800 number, we're getting more
15 people calling us, so we are somewhat working against ourselves.
16 But my goal is to get to zero. I believe we've taken a lots of
17 steps.

18 One other thing we've done -- a couple other
19 things we've done. As I mentioned earlier, we have to get the
20 plan's side of the story, and so, we used to give the plans,
21 when I came into office, 20 business days to respond. I cut
22 that back to 5 business days.

23 Another thing we did is, we installed a high
24 speed FAX machine to FAX our inquiries to the plans so that they
25 couldn't say, "Well, it took a couple of days in the mail," or
26 it didn't come, or whatever. So, were now FAXing those out,
27 because I just think it takes too long to go through this
28 process.

1 I want -- people cannot often afford to wait, you
2 know, 90 or 120 days to get answers to their complaints.

3 SENATOR LEWIS: This went back to the dental,
4 that Western Dental situation one more time.

5 You mentioned that it's bad dentistry to practice
6 on four quadrants simultaneously, or at the same sitting.

7 If you were a consumer, and you had dental work
8 that needed to be done on three or four of the quadrants, and
9 you told them that, because of employment concerns, or whatever,
10 you wanted to get it all done in one day, should they or should
11 they not accommodate you?

12 MR. BISHOP: I'd have to consult with our dental
13 expert on that question. I'm obviously not a dentist.

14 In undertaking this investigation, we actually
15 had six separate dental consultants. One was a dental
16 consultant for our Enforcement Division, and then we had five
17 separate dental consultants that advised our Health Plan
18 Division in reviewing these situations. So, the conclusions
19 that we reached were about medical dental quality of care, were
20 conclusions that came from our dental consultants. And they
21 represented both an academic and a practicing dental
22 background.

23 SENATOR LEWIS: Any other questions from Members
24 of the Committee?

25 Why don't we proceed with testimony. Anyone in
26 the audience wishing to testify in behalf of Mr. Bishop?

27 MR. THOMPSON: Mr. Chairman, Senators, my name
28 is Steve Thompson. I'm representing the California Medical

1 Association.

2 When you go through confirmation hearings, I know
3 one of the tough things that everybody has to wrestle with is,
4 how happy they are with the subject matter versus the quality of
5 individual that comes before you for confirmation.

6 I must tell you, I don't think that any
7 organization outside of the California Medical Association has
8 been more aggressive or critical in what we perceive as the
9 general oversight of a changed managed care industry in
10 California today. Those of you that sit on any of the
11 committees in which legislation comes before you know that to be
12 the fact.

13 One of the ironies of the position that you have
14 before you is that the total resources available for regulating
15 full service health care plans, covering 17 million
16 Californians, is slightly over \$6 million.

17 The Department of Health Care Services, to
18 regulate Medi-Cal plans covering about 1.8 million recipients,
19 spends \$22 million annually.

20 And the Medical Board, which licenses about
21 70,000 practicing physicians, spends physician fees in the
22 neighborhood of \$20 million.

23 One of the glaring disparities, which we've tried
24 to point out year after year in the budget, is that unless you
25 increase the capacity, the resources for this most important,
26 and probably today, largest industry in California, those who
27 are nominated and those who criticize will continue to bring
28 forth to you complaints of inadequate monitoring.

1 So, in that regard, I don't think the California
2 Medical Association believes that the Department of Corporations
3 has fulfilled that initial statutory charge, which you gave
4 it -- this legislative body created the regulation of the HMO
5 industry out of abuses, unregulated abuses in the market place.
6 So, until the resources are there to do the job, there will
7 always be problems.

8 Now, you must ask yourselves, is Mr. Bishop a
9 qualified Commissioner to undertake this endeavor? In our
10 opinion, he absolutely is. He's been in the job eleven months.
11 He has disagreed with us on numerous occasions. To a
12 significant degree, he's opened his door, and outside of the
13 Blue Cross merger hearings that were generated by legislation,
14 has called for the first public hearings on any financial
15 transaction involving large California HMOs, and those are the
16 two recent mergers.

17 He didn't identify the fact that he carried
18 through to completion the largest fine against an HMO for denied
19 individual care, and that was the Harry Cristy case emanating
20 out of the Take Care suit.

21 He has implemented to fair degree, by virtue of
22 the fines that occurred in regard to the nonplacement of the 800
23 number, the grievance procedure. And the 800 number that they
24 have that was in the response to Mr. Rosenthal's bill. And we
25 think he shortened the timeframe to handle those grievances.

26 Are there still problems with the management of
27 HMOs? Absolutely, but until the resources are finally put in
28 place for the State of California to carry this out, it's going

1 to be always an uneven and inadequate enforcement provision.

2 Further, we believe that Mr. Bishop brings to
3 this job a sense of public service, which is very important for
4 every appointee that comes before this body. We've found him to
5 be honest, fair, open, and committed to the job that he is
6 appointed to on a temporary basis, and would be appointed to on
7 a permanent basis.

8 In the final analysis, those criteria are the
9 criteria that one should consider very seriously in approving or
10 disapproving a public appointment. Too often in public service
11 today, people don't come with those values, and subsequently,
12 whether you agree or disagree with all of the issues that are
13 carried out, those are the values that best serve the taxpayers.

14 Thank you.

15 CHAIRMAN LOCKYER: Thank you.

16 Questions? Are there others?

17 You can jump in at any time if something provokes
18 you, but it's probably a good time just to let others say
19 whatever they might.

20 Others who wish to may any comment, please just
21 come forward, either pro or con.

22 MR. COURT: Thank you. I'm Jamie Court with
23 Consumers for Quality Care, which is a consumer watch dog group
24 interested in promoting the public interest in higher quality
25 health care.

26 We are here to oppose the confirmation of
27 Mr. Bishop. We believe he's failed to enforce the state law
28 regulating HMOs during his one-year tenure, and he must be

1 replaced.

2 What you have to remember about Mr. Bishop is, he
3 has new enforcement tools. He is the first Commissioner with
4 enforcement tools afforded him by the Legislature in 1995. And
5 yet, patients who have turned to him with life and death matters
6 have found it a futile exercise, even when it appears that there
7 are some violations of the Knox-Keene Act.

8 Unlike Mr. Bishop's predecessor, the Legislature
9 has, under Mr. Bishop's watch, established an 1-800 hotline. In
10 fact, thousands of those complaints from consumers come in every
11 month during his entire tenure.

12 The consumer service hotline, just to give you an
13 idea, received 6,714 calls in March of '97, 7303 calls in
14 February '97. I believe it was slightly less before the
15 beginning of the year, but still in the thousands, 3-4,000.

16 Yet despite all the thousands of these complaints
17 that flooded into the hotline each month, we have not seen one
18 fine issued against an HMO for denial of treatment, a denial of
19 treatment, which is the most common problem at an HMO today.
20 Not the over-utilization that was involved in the Western Dental
21 case, which, by the way, I think the action was taken about a
22 week-and-a-half ago, so I commend the Committee for actually --
23 I think these hearings helped force that action out.

24 But in no case which has come before Mr. Bishop's
25 desk has he seen fit, of these thousands of complaints, to levy
26 a monetary fine against an HMO for a denial of care, denial of
27 treatment, the rationing of care we see at HMOs.

28 If it doesn't cost an HMO to deny and delay when

1 the state regulator doesn't wield his fining and enforcement
2 authority, HMOs won't put up. They won't put up the care. In
3 fact, HMOs are notorious for denying and delaying until it costs
4 them something.

5 On Mr. Bishop's watch, they've had a virtual free
6 ride, given what's been coming in in terms of complaints.

7 To give you some idea about the fines that have
8 come into the Department, I think it's over a million dollars in
9 fines. A half million of that was actually a fine issued by
10 Mr. Bishop's predecessor in a single incident case, in a case of
11 a little girl with Wilms tumor.

12 An administrative law just subsequently affirmed
13 that decision, and Mr. Bishop, actually a few days before the
14 election, affirmed that decision as well. So, he collected that
15 fine, but he did not initiate it, and that was for denial of
16 treatment.

17 The other fines, if you look at fines for not
18 announcing the 1-800 hotline, amounted to, on average, of the 43
19 plans fined, with the sum total of a half million dollars, maybe
20 \$10-11,000 each, except for one which had about a \$40,000 fine.
21 This is a slap on the wrist to HMOs. That the big ones today
22 have literally a billion dollars in profit they're sitting on.

23 Mr. Bishop's written response to this Committee's
24 request for information reveals some very troubling things.
25 That Mr. Bishop, according to the response, and hopefully he'll
26 clarify a little later, that he has been unwilling to judge the
27 merits of complaints and requests for assistance filed by the
28 HMO consumers, despite the authority granted to the Commissioner

1 under the Knox-Keene Act.

2 I'm just going to quote from the Bishop
3 administration correspondence to the Committee, which was in the
4 public file, quote, "The Department does formally and publicly
5 find whether a plan the Act," referring to Knox-Keene Act, "or
6 conversely, that a plan has complied with the Act," end quotes.

7 Again, I think Mr. Bishop is trying to be quite
8 impartial here, but contrast this with Mr. Bishop's mandate
9 under the Knox-Keene Act. This was something that Mr. Rosenthal
10 added in the '95-96 section to the Act. He says the
11 Commissioner shall, as appropriate, investigate and take
12 enforcement action against plans regarding complaints by
13 enrollees and subscribers.

14 Clearly, Mr. Bishop has not found it appropriate,
15 but this was language that Mr. Rosenthal added during '95-96
16 session that clearly grants the authority to the Commissioner to
17 be someone who determines the merit of a complaint and issue
18 fines when required.

19 The Bishop administration has claimed, quote, "It
20 is not a trier of fact, and the request for assistance process,
21 the complaint process, is not judicial in nature. While the
22 Department obtains and reviews a plan's response to an RFA, the
23 plan is not accorded full procedural due process rights."

24 In other words, the administration believes that
25 the due process rights of the HMO are preeminent over the
26 interests of the HMO consumer in need of state intervention.
27 Yet, we have the Knox-Keene mandate.

28 We believe this is a scandalous failure to

1 enforce the current law. If the thousands of consumers who call
2 the Department each month knew that the urgent help they sought
3 from the state HMO regulator would be no more than discussions
4 with the HMO, they would likely lose their trust in government
5 to execute the laws that the Legislature enacts, such as
6 Mr. Rosenthal's law.

7 Without a cop on the beat ready to wield a club,
8 really, this law is meaningless, particularly on the HMO beat.

9 A parallel I have is, if you had a police chief
10 whose department has never written a parking ticket or towed a
11 car under this reasoning: a parked car in the middle of the
12 road indicates to the chief insufficient evidence to demonstrate
13 that the driver is in compliance with traffic laws, yet to fine
14 to fine or tow that car would ignore the due process rights of
15 the car's owners.

16 When you look at the language of the response to
17 consumers, and I think there is some here, you find that
18 Mr. Bishop does not judge the merits of complaints, but simply
19 says there is not sufficient evidence to find compliance with
20 the Knox-Keene laws, that's it.

21 This is the situation HMO consumers find
22 themselves with Mr. Bishop's administration.

23 Three other troubling aspects with the Bishop
24 administration's written response to the Committee's request
25 for information. One is, the law requires 60 calendar day
26 processing of a complaint. Again, there is a little weasel
27 clause in his or her discretion, so they can get out of it, but
28 that was clearly the intent of the law, and it says 60 calendar

1 days.

2 The response provided by the Department shows
3 that only about half the complaints to the hotline are resolved
4 in the 60 day time period. Some take as many as 120 days.
5 There's a woman who will testify later, it took seven months on
6 an urgent request. People don't have this time to wait.

7 In addition, when they get a response from the
8 Department that the complaint is closed, basically all the
9 response says is, there is no compliance, that they can't find
10 compliance with the Act, not that noncompliance has some
11 consequences. So, there's no real resolution for the patient,
12 even though maybe the complaint is closed on the Department's
13 books.

14 In addition, the Bishop administration stated in
15 correspondence that enforcement actions, administrative actions
16 taken on a basic, simple, single incident would be the exception
17 rather than rule. In other words, this is not going to be
18 apparent in practice, yet the only fine issued for a denial of
19 care is the half million dollar fine levied against FHP in a
20 single incident case, in the case of a girl with Wilm's tumor
21 who couldn't get access to treatment.

22 So, the fine imposed in November of '94 by Mr.
23 Bishop's predecessor was a fine that was contested two years by
24 HMO attorneys. And still an administrative judge found that the
25 fine was just, and Mr. Bishop affirmed it.

26 The point here is, the pattern set by Mr. Mendoza
27 was single incidents that were egregious would have a fine.
28 Mr. Bishop seems to suggest they will not.

1 Another troubling problem is, we've seen some
2 very highly critical audits and surveys from the Department, and
3 we have seen inaction following those audits. Two good examples
4 of some high profile cases were the Health Net cases, cancer
5 care denials. The Fox v. Health Net case, deMeurers v. Health
6 Net case. One was on the cover of Time magazine. Yet, the
7 lawyer in the case, Mark Hebler, claims he's never heard from
8 the Bishop administration.

9 In the response, the correspondence to the
10 Committee, the Bishop administration says that it did do an
11 audit after the Health Net cases and found, quote, "The Health
12 Net does not adequately monitor the authorization denial for
13 bone marrow." And what the Department simply did was, quote,
14 "Required Health Net to correct these deficiencies." No fine.

15 We find there's a real problem here. No fine was
16 issued. And that's what's going to matter to a Health Net, to a
17 cost cutting HMO.

18 So, not even in following a complaint, but in
19 following a critical survey, medical survey, we have not seen a
20 fining authority used.

21 A classic example of this is in the handling of
22 Kaiser, the state's largest HMO. There was a highly critical
23 audit in August of '96. The Department's auditors found
24 systemic problems. Among the findings were, medical decisions
25 do not appear to be, quote, "independent of fiscal and
26 administrative considerations," which is a violation of the
27 Knox-Keene Act. They found clinical review nurses had the
28 authority to overrule physician decisions, basically

1 administrators overruling doctors, again a violation of the Act.

2 And in addition, they found 25 percent of all
3 emergency room treatment for Kaiser members appeared to be
4 denied unreasonably based on administrative concern, money
5 rather than medicine.

6 To date, we haven't seen a sanction from the
7 Bishop administration.

8 CHAIRMAN LOCKYER: Who did that work?

9 MR. COURT: That was the Department of
10 Corporations audit.

11 CHAIRMAN LOCKYER: Their own auditors concluded
12 that, what was the 25 percent?

13 MR. COURT: That 25 percent of all emergency room
14 treatment for Kaiser members outside of the network appeared to
15 be unreasonably denied, based on the mechanisms in place for the
16 denial. Which is, an emergency room doctor would call a Kaiser
17 nurse on the phone, a 1-800 nurse from Hell, and she would deny
18 that procedure. That shows there's not a medical chain of
19 authority but a money chain. This was in August, '96.

20 And at the time, as many headlines showed,
21 Mr. Bishop's administration said in six months, which would have
22 been February, there'd be some response formally from the
23 Department after investigating further. We haven't seen a
24 response.

25 What we have seen, however, is other regulators
26 jumping into the fray on the same issue. Texas regulators
27 issued a million dollar fine against Kaiser in a case -- a
28 series of wrongful death cases where there were deaths due to a

1 lack of safe emergency care.

2 In California, federal regulators threatened pull
3 Kaiser's funding because of a problem with the emergency care at
4 the Richmond facility, where some patients had died.

5 And just last week, consumer advocate Ralph Nader
6 joined with our group in calling upon Mr. Bishop to freeze
7 Kaiser enrollment until these problems identified in the audit
8 and by these other regulators are dealt with.

9 We haven't had a response yet, but the problems
10 identified were very similar to the problems identified in this
11 Kaiser audit. So, other regulators had identified similar
12 problems in August of '96 that Mr. Bishop had. Informed Kaiser
13 that the state would take some action in six months. The
14 deadline's passed. We haven't heard a public word.

15 The last three things I'll mention just real
16 quickly, talk to what we believe is an unfair bias towards the
17 HMO at the expense of the HMO consumer in Mr. Bishop's
18 administration. One is that he has appointed as his top
19 deputy, Assistant Commissioner, a former HMO executive. A man
20 by the name of Gary Hagen, who served from '88 to '91 as
21 Foundation Health Corporation's chief lobbyist in Sacramento.
22 He's responsible for the day-to-day oversight of managed care
23 plans. This is an HMO executive.

24 In addition, he was responsible for the oversight
25 of the merger of his former employer, which was Foundation
26 Health, and Health Systems International. And myself and some
27 other consumer advocates wrote a letter asking for Mr. Hagen to
28 recuse himself from the deliberations. Mr. Bishop failed to

1 reply to our letter voicing concerns.

2 We thought it was improper, but it pointed to
3 larger problem at the administration, that to a certain degree,
4 the people there are foxes guarding the hen house. This is an
5 HMO executive responsible for oversight.

6 CHAIRMAN LOCKYER: This is the letter of February
7 7th you're referring to?

8 MR. COURT: I believe it's about that timing.

9 CHAIRMAN LOCKYER: You wrote it to Mr. Hagen
10 asking that he recuse?

11 MR. COURT: And we cc'd Mr. Bishop and a few
12 others as well.

13 SENATOR ROSENTHAL: Even me.

14 MR. COURT: Mr. Rosenthal as well.

15 CHAIRMAN LOCKYER: That's the letter we're
16 talking about.

17 MR. COURT: We also believe Mr. Bishop has failed
18 to adequately scrutinize the recent wave of mergers, which, by
19 the way, will place one out of every three Californians --
20 excuse me, which will place 70 percent of Californians in one of
21 three HMOs: Kaiser, PacifiCare, or the new Foundation Health
22 Systems.

23 He ignored the advice of the entire medical
24 community. At the time, the California Medical Association was
25 opposed to the mergers, the California Nurses Association,
26 consumer groups, and our concerns were largely ignored. He
27 approved both deals.

28 In fact, he was the only regulator in the whole

1 scenario to actually be able to look at quality. The others
2 looked at anti-trust concerns. We believe he had the obligation
3 to look at quality, and that there were some good cases that
4 such large HMOs could unduly leverage the doctor to such low
5 reimbursement rates, patients couldn't get adequate care.
6 Doctors believe that.

7 Mr. Bishop took -- allowed these mergers anyway.

8 The last concern we have is about a decision made
9 by Mr. Bishop last summer, after he took office, in which he
10 exceeded regulatory authority to, quote, "evaluate managed care
11 plans throughout the state for compliance with the Knox-Keene
12 regulations" to a privately funded group. It's a private
13 industry accrediting group called JCHO, the Joint Commission on
14 the Accreditation of Health Care Organizations, which has been
15 criticized for very shoddy hospital audits, for charging
16 hospitals accreditation fees, and for an industry-dominated
17 governing board. Twenty-one out of twenty-eight members of this
18 JCHO Board of Directors are industry representatives who pay
19 \$20,000 a year for a seat. And Mr. Bishop allowed them to be a
20 contractor for the state to do medical audits.

21 A July, '96 audit of JCHO by the consumer group
22 Public Citizen found that JCHO, quote, "views hospitals not as
23 entities to be regulated, but as customers to be serviced and
24 satisfied."

25 The other contract which Mr. Bishop gave at the
26 same time was quite interesting because it was to CMA-affiliated
27 group, a California Medical Association affiliated group. So,
28 when the California Medical Association comes up and supports

1 Mr. Bishop's confirmation, after many of their representatives
2 vehemently opposed these mergers, I hope you put it in the
3 context of the fact that the CMA is a subcontractor of the
4 Department of Corporations. They were hired as the Institute
5 of Medical Quality.

6 CHAIRMAN LOCKYER: You provoked Mr. Thompson. I
7 haven't seen that happen in at least 12 years.

8 SENATOR BRULTE: Mr. Thompson, are you a pig at
9 the trough?

10 [Laughter.]

11 MR. THOMPSON: I want to point out that it's a
12 separate subsidiary, not controlled by us.

13 Secondly, I don't think anybody's ever accused me
14 of a conflict, sir, in my whole life.

15 CHAIRMAN LOCKYER: I will.

16 [Laughter.]

17 SENATOR BRULTE: Let me congratulate the witness.

18 [Laughter.]

19 MR. COURT: It's a clear revenue raiser for the
20 CMA. It was a CMA initiated group.

21 CHAIRMAN LOCKYER: Do you know it's a separate
22 subsidiary?

23 MR. COURT: My belief, and we can confirm it, is
24 it's a CMA Founded group, and that the revenues.

25 CHAIRMAN LOCKYER: What's it called?

26 MR. COURT: I think it's called the Institute for
27 Medical Quality.

28 CHAIRMAN LOCKYER: What did both of those groups

1 wind up with, what kind of compensation? Do you know?

2 MR. COURT: I don't know. I'm almost done, but
3 it was the two subcontracts to finish these audits.

4 Well, generally, I think you get the gist of my
5 comments, which is that we need a states watch dog with some
6 bark and some bite.

7 CHAIRMAN LOCKYER: You heard Mr. Thompson
8 indicate that the real problem, in his view at least, is
9 systemic, not competence, honesty, or any quality of the
10 Director.

11 MR. COURT: And I wouldn't fault the competence
12 or -- I wouldn't fault the honesty of Mr. Bishop.

13 What I would say is that consumers who turn every
14 month to the Department in the thousands need someone with a
15 consumer perspective, a watch dog, to not evenly balance the
16 interests of the HMO and the consumer, but when there is an
17 abuse, to say there's a violation of law, and to be trier of
18 fact, to judge complaints on their merits, and to take action.

19 So, Mr. Bishop has, to his credit, held some
20 hearings on mergers, made the process more open.

21 What I'm concerned about is, given all these new
22 tools that the Legislature empowered him with, he has not used
23 them in a way that an appointee who looks after the consumer,
24 and looks after enforcing the Knox-Keene Act would.

25 CHAIRMAN LOCKYER: Got your point. Thank you.

26 Let's ask you to respond so some of the things
27 you just heard.

28 MR. BISHOP: There was a lot there.

1 Going through my notes, I guess I would say that
2 I am willing to take action on consumer complaints. And I think
3 there's a misunderstanding about the complaint process, and
4 perhaps a misunderstanding that might actually -- which I
5 believe will hurt consumers.

6 We are not, in the initial phase of handling
7 complaints, affording either the consumer or the plan full due
8 process rights. We are not holding administrative hearings.

9 We could do that if the Legislature gave us the
10 authority. I would fear that that, perhaps, would slow down the
11 process immensely.

12 In crafting -- when I came on, I looked very
13 carefully at how we responded to consumer complaints. And what
14 I wanted to do was not give something that would jeopardize the
15 consumers. If we found that perhaps there wasn't a violation,
16 that would prejudice the consumer in pursuing their individual
17 private action, whether it's civil or an arbitration, in that
18 they'd have something formal from the Department which was not
19 after a full due process hearing.

20 Complaints do get referred to our Enforcement
21 Division. And when they go to our Enforcement Division, if we
22 bring a case, such as the case we brought against Western
23 Dental, in that case we chose to make it a civil case, and so we
24 took it to court. And there it will be heard and adjudicated in
25 a formal due process way.

26 I'd like to speak --

27 CHAIRMAN LOCKYER: What do you audit? The Kaiser
28 audit that suggested that 25 percent of the emergency room

1 referrals were really cost driven in refusal of treatment?

2 MR. BISHOP: I have serious concerns. The
3 medical survey of Kaiser came out during my tenure. I think it
4 spoke to the quality of the medical the medical survey.

5 I have, in no uncertain terms, made it clear to
6 Kaiser, not only were they required to submit a plan of
7 correction, but that we would be back. And if those
8 deficiencies are not corrected, there are going to be serious
9 consequences for Kaiser.

10 CHAIRMAN LOCKYER: When do you identify the
11 deficiencies?

12 MR. BISHOP: We identified them as part of our
13 routine medical survey process.

14 CHAIRMAN LOCKYER: What month?

15 MR. BISHOP: Well, the report came out in August
16 of 1996.

17 CHAIRMAN LOCKYER: How long do they get to
18 correct?

19 MR. BISHOP: We were originally scheduled to come
20 back in August of this year, and I moved that forward to July of
21 this year.

22 In the last week alone, I've had three separate
23 telephone calls to the Chairman and CEO of Kaiser, reiterating
24 the fact that these deficiencies have to be fixed.

25 I'm also concerned with Kaiser's handling of
26 complaints. A few months ago, I called Dr. Lawrence to my
27 office in L.A. to personally discuss with him my concerns about
28 the way they're handling their grievance process.

1 CHAIRMAN LOCKYER: What sort of problem did you
2 think was occurring with their grievance process?

3 MR. BISHOP: There were problems that we
4 identified in our medical survey report that had to do with
5 whether or not they were following the complaints in terms of
6 assessing the quality of care.

7 In our own shop, I thought that they were -- our
8 handling of Kaiser complaints was taking an inordinate amount of
9 our internal resources, and that's a problem.

10 I wanted to speak a minute about the Assistant
11 Commissioner for Health Care, and I want to make one thing
12 absolutely clear. He is an assistant. I make the decisions.
13 Mr. Hagen does not make the final decisions; I do.

14 CHAIRMAN LOCKYER: What were his principal
15 responsibilities?

16 MR. BISHOP: Mr. Hagen, well, he oversees the
17 Health Plan Division and reports directly to me on the
18 operations.

19 He does not make any major policy or operational
20 decisions without my approval. I mean, they're all my
21 decisions.

22 CHAIRMAN LOCKYER: So, you don't think his
23 history of employment with one of the large plans prejudices his
24 recommendations or administrative work?

25 MR. BISHOP: Absolutely not. He -- when I came
26 in office, the position of Assistant Commissioner had been
27 vacant for more than a year. I wanted to get someone who had
28 experience in the health care industry. He did have experience

1 in the managed care industry, but he also had experience with a
2 large not-for-profit home delivery system in the Washington
3 State area.

4 I value his expertise in the health care
5 industry, but the decisions are mine.

6 CHAIRMAN LOCKYER: What about these two
7 subcontractors, JCHO and IMQ? What's the story there?

8 MR. BISHOP: I think they illustrate what I was
9 trying to say in my opening remarks. Almost any decision
10 invites some comment and criticism.

11 The Department of Corporations formerly had an
12 internal requirement, an internal goal, of doing medical surveys
13 within three years. Due to legislation, that became a statutory
14 responsibility about the time I came into office. So, one of my
15 top priorities -- we had never met that goal -- was to get us on
16 track.

17 I knew that we did not have the internal
18 resources, and we went through a process that actually began
19 before I got there of soliciting proposals. And when I came on
20 board then, it was my responsibility to make a decision on a
21 contractor.

22 What he characterizes as two contracts is what I
23 view as a joint contract between the JCHO, Joint Commission on
24 Accreditation of Health Care Organizations and the Institute for
25 Medical Quality.

26 When I made that decision, I think that decision,
27 I got more complaints from the managed care industry than almost
28 any decision I've made. At the same time, I got complaints from

1 people with a different viewpoint.

2 CHAIRMAN LOCKYER: Welcome to the middle of the
3 road. You get hit by traffic going both directions.

4 MR. BISHOP: So, it's been one of the interesting
5 aspects of the job. I feel it was the right decision to make
6 because it's important --

7 CHAIRMAN LOCKYER: What do they do for you?

8 MR. BISHOP: Well, that's the other thing that's
9 important. They do not take responsibility for the medical
10 survey.

11 They provide medical specialists to do the
12 on-site portion, go out to the health plans, review the patient
13 charts, and do the interviews.

14 But the final product is the product of the
15 Department of Corporations and staff within the Department of
16 Corporations. That's very clear in the contract.

17 Another thing that's very clear in the contract
18 is, there were strict conflict of interest requirements and
19 standards that were built into it. Again, I got criticism from
20 the managed care industry, and you've heard some criticism here
21 today.

22 CHAIRMAN LOCKYER: Do you, Mr. Bishop, not have
23 staff expertise within the Department that can do that survey?

24 MR. BISHOP: We have staff expertise. We don't
25 have enough of it.

26 CHAIRMAN LOCKYER: That's what I mean. You're
27 still paying for it. You're contracting out, and you're paying
28 for it, or internalizing and paying for it?

1 MR. BISHOP: Yes.

2 CHAIRMAN LOCKYER: Is it flexibility that you get
3 from the contracting out? What's the point?

4 MR. BISHOP: It does give us flexibility in
5 contracting out, because we do -- the cycle, the three-year
6 cycle is not exactly even, because it depends on when the plan
7 was licensed, and things like that.

8 The other thing that I thought was particularly
9 important was that it allowed us to fire the contractor if they
10 didn't do a good job. And I made that very clear, that I was
11 interested in performance, and I will not renew that contract
12 unless they do a good job. We're in the process now of
13 evaluating, really, the first almost year's performance on that
14 contract.

15 CHAIRMAN LOCKYER: How much do you spend on that
16 work?

17 MR. BISHOP: I'd have to give you the number. I
18 don't want to give you the wrong number.

19 CHAIRMAN LOCKYER: When you get it, let us know,
20 Ms. Michel.

21 Were there other points Mr. Court made that you'd
22 wish to respond to at all?

23 MR. BISHOP: I wanted to address the Carly
24 Christie case, because that was one that I was involved with
25 before I came to the Department of Corporations as Deputy
26 Secretary and General Counsel to the Business, Transportation
27 and Housing Agency.

28 After I got there, the decision to approve the

1 fine rested with me. And I got a tentative decision, is the way
2 it works in the administrative law world is, a tentative
3 decision is sent to me. I could have not made the decision to
4 uphold that, and I would not have, had I thought it was the
5 wrong thing to do.

6 So, there was about 20 volumes of testimony that
7 was taken in the administrative law case. I read all 20 volumes
8 before I reached a decision.

9 When I made the decision, I knew that it was the
10 right decision to make. I don't think that will be the last
11 single incident case.

12 CHAIRMAN LOCKYER: You're going to wind up on a
13 Court of Appeals if you have that sort of monastic tendency to
14 read 20 volumes.

15 MR. BISHOP: Well, I just -- I don't feel I can
16 fine somebody \$500,000.

17 CHAIRMAN LOCKYER: You're right. That's a good
18 thing to do, be thorough.

19 I'm looking at the budget proposal for the
20 Department, because at least a number of the comments seem to
21 suggest that there are problems with inadequate resources that
22 produce inadequate enforcement and oversight.

23 I note that the general budget is reduced by 47
24 positions. Has that changed at all during the course of budget
25 subcommittees here?

26 MR. BISHOP: I'm sorry, the number was?

27 CHAIRMAN LOCKYER: It says 47 fewer positions,
28 3.6 million cut.

1 MR. BISHOP: Oh, yes, that relates to the fact
2 that we're losing oversight of the credit unions, industrial
3 loan companies.

4 CHAIRMAN LOCKYER: So, it's not a cut in your
5 like health oversight?

6 MR. BISHOP: Right.

7 CHAIRMAN LOCKYER: That seems to be frozen, same
8 level as current year.

9 Health care program, is that the piece that does
10 that?

11 MR. BISHOP: Right. We actually --

12 CHAIRMAN LOCKYER: Eighty-three positions?

13 MR. BISHOP: There's a Finance letter that we
14 have submitted which would Augment our spending authority in
15 connection with the document imaging program.

16 CHAIRMAN LOCKYER: Is that part of this oversight
17 responsibility?

18 MR. BISHOP: Well, we have, I believe, been
19 criticized, rightfully, for not being as accessible to the
20 public as we could be. It's an issue that I've discussed with
21 consumer groups, and we get -- we have now on file 17 million
22 documents. We get 3 million new documents every year that are
23 filed with us.

24 We have a paper problem. By law, we have to make
25 many of these files available to the public.

26 I have a concern with the security of those files
27 and with the accessibility. If we lose those files, you know,
28 through a fire or just losing them, they're gone because we

1 can't afford to make copies.

2 CHAIRMAN LOCKYER: So, you've submitted a Section
3 28 letter, or whatever the right number is in this instance, for
4 how much money?

5 MR. BISHOP: Well, the total project, which would
6 cover all of our programs, is 3.8 million next year, and would
7 be for a document imaging project which would convert our
8 documents and all our new filings to CDs, and then would be
9 software program that would allow us to track and identify all
10 the filings.

11 I think that will significantly enhance our
12 ability to provide the public with information about all the
13 programs that we administer.

14 CHAIRMAN LOCKYER: We're currently dealing with
15 the Department of Forestry's deficiency, and it sounds like we
16 might also save some trees by helping you with this. You may
17 now get added to that proposal.

18 What other questions from Members?

19 Senators, we can take more testimony, unless
20 there's someone that has one that wants to pop up here. Okay,
21 testimony.

22 MR. OWENS: My name is Howard Owens. I'm the
23 President of Health Access of California.

24 In Health Access, we're composed of over 200
25 consumer groups. In the past year, we've been actively engaged
26 in organizing HMO enrollees so that they can take action within
27 their own HMOs.

28 We've found that the Californians that we've

1 worked with have been very concerned about the lack of
2 enforcement and lack of aggressive representation for them in
3 the health care field.

4 As a result of this, we've prepared a list of 13
5 proposals that are in the Legislature today, 13 separate bills,
6 that we refer to as the Patients' Bill of Rights to try to
7 protect people.

8 We've also signed on and are working with a
9 number of other people, including Senator Rosenthal, on other
10 areas to try to correct what we consider the abuses within the
11 HMOs.

12 Health Access of California is dedicated to
13 universal access to quality affordable care for all
14 Californians. We've been dismayed to find out that even
15 Californians who have health benefits have not been able to get
16 the care that they need when they need it.

17 We think that an effective enforcement agency
18 should be there alongside consumers to fight with them to get
19 the care that they need, and that the tools are there for this
20 regulatory agency to do that.

21 We believe that the Department of Corporations
22 under Commissioner Keith Bishop has failed to do this, and for
23 this reason we oppose his confirmation.

24 CHAIRMAN LOCKYER: Mr. Owens, is it his fault, or
25 is it the Governor's fault or responsibility, and the
26 Legislature's fault and responsibility for not --

27 MR. OWENS: Well, I believe, from what I've heard
28 today -- let me tell you that we did a radio show in San

1 Francisco about HMO abuses. Within eight hours, we got 188
2 complaints, which were forwarded, by the way.

3 Now, whose fault is it? I don't know that I'm
4 really capable of answering that.

5 CHAIRMAN LOCKYER: It's hard for us to turn
6 somebody down who may be dedicated and competent if he's got an
7 impossible job.

8 MR. OWENS: But let me tell you what I've heard
9 coming through today. I've heard a plea from Senator Rosenthal
10 and others that the Commissioner in the health care field ought
11 to act as an aggressive representative of consumers.

12 I have not heard the Commissioner accept that
13 responsibility. I've heard him talk about an even-handed --

14 CHAIRMAN LOCKYER: That's handling individual
15 complaints that come in.

16 MR. OWENS: Yeah, but we think that the
17 Commissioner ought to be an aggressive advocate for patients.

18 We believe that big corporations like Kaiser and
19 Health Foundation, and that sort of thing, have enough
20 resources, enough strength, to pretty well look after
21 themselves. Where we really need aggressive representation is
22 from the Commissioner.

23 I haven't heard him accept that here today, and
24 I've listened very, very carefully. And I think that's a
25 responsibility he has to accept if he's going to be a
26 Commissioner.

27 SENATOR BRULTE: Question. Do you think we ought
28 to outlaw HMOs?

1 MR. OWENS: Oh, no. I think HMOs are a very good
2 way to deliver services. I just think that they ought to be
3 regulated so that they handle their job in the best interests of
4 the consumer. But I really think HMOs is a good way to go.

5 CHAIRMAN LOCKYER: Thank you. Other comment?

6 None of my friends like you, Mr. Bishop, or your
7 job, or something, or your boss. Some problem you've got here.

8 MS. CAPELL: Beth Capell on behalf of the Service
9 Employees International Union. We represent 300,000 workers in
10 California, including 100,000 health care workers, including
11 many in managed care.

12 I want to just make a few additional points. In
13 1996, SEIU, along with many community groups, elected officials
14 and others petitioned the Department of Corporations to examine
15 the massive restructuring that's going on at Kaiser now.

16 Kaiser looks like it's closing its Oakland
17 facility. It's closing Kaiser Morse Avenue here in Sacramento.
18 It's closing Kaiser Sunset, and --

19 CHAIRMAN LOCKYER: Your letter says that their
20 comment was they weren't authorized to seek public input?

21 MS. CAPELL: That's correct.

22 CHAIRMAN LOCKYER: Can I ask him about that?

23 MS. CAPELL: Yes, please.

24 MR. BISHOP: I believe that we -- I have sought
25 public input on a number of times under the Knox-Keene Act,
26 including in connection with the mergers, and in connection with
27 our dental quality of care survey. I'm going to have a public
28 hearing in May.

1 When Kaiser files their -- the exact details of
2 what they're proposing so that there can be informed public
3 comment, I intend to get public input, and I intend to hold
4 public hearings.

5 MS. CAPELL: This is news to us.

6 CHAIRMAN LOCKYER: I guess you thought that the
7 petition wasn't the right timing? Is that how that worked?

8 MR. BISHOP: At the time, I thought it was
9 premature.

10 MS. CAPELL: We have been in negotiations
11 directly with Kaiser over closure of the facilities. We are
12 participating currently in conversations, not only with Kaiser,
13 but with successor facilities.

14 And we find it strange, to say the least, that we
15 could be months into conversations with Kaiser about potential
16 closure, impacts of closure on quality of care on consumers and
17 workers, and have Mr. Bishop regard it as premature to hold
18 public hearings.

19 CHAIRMAN LOCKYER: It's one thing to be
20 negotiating with the employees about employment and impacts on
21 their organization or closures. And another, I guess, to have
22 some kind of approval from the state.

23 Is there a point at which they have to come to
24 you?

25 MR. BISHOP: They cannot make a material change
26 in their plan operations without filing a notice and getting
27 approval from the state.

28 CHAIRMAN LOCKYER: What would happen when they

1 file that notice?

2 MR. BISHOP: I would at that point make the
3 information -- it would be public information, and I would
4 solicit public input and hold public hearings.

5 I have myself been in discussions with Kaiser
6 about their -- what they are thinking about doing. But at this
7 time I don't have the details of it, and so, I think it's
8 important to have exactly what they're proposing to do before
9 the Department, before we can have a meaningful public hearing
10 on it.

11 CHAIRMAN LOCKYER: Senator Brulte, on that point.

12 SENATOR BRULTE: I want to ask the witness, did
13 you ask the Commissioner to hold --

14 MS. CAPELL: We asked the Commissioner, yes, to
15 hold public hearings or to seek public input on the proposals
16 that we understood Kaiser to be considering.

17 Their response, as I recollect it, was that they
18 were not authorized to seek public input, and therefore were not
19 permitted to do so. If that's not direct quote, it's very close
20 to my recollection of it.

21 It is -- this moment now is the first we have
22 known that the Commissioner would seek public input on this,
23 which is obviously -- we believe Kaiser is contemplating closing
24 literally every hospital in its system, which is obviously a
25 massive redesign of the way Kaiser delivers care.

26 SENATOR BRULTE: Mr. Bishop, your position is
27 that the time to hold the hearing is when a specific proposal
28 was made, not when there's speculation by a labor union as to

1 what an HMO may or may not do?

2 MR. BISHOP: Yes, Senator.

3 SENATOR BRULTE: Is that inconsistent with what
4 you just stated?

5 MS. CAPELL: If I might, Senator Brulte, two
6 points.

7 First of all, this is not merely a labor
8 organization. There are, as I mentioned, a large number of
9 community groups.

10 SENATOR BRULTE: Let me strike that part then.

11 You stated that you think you know what Kaiser is
12 doing, and I understand that you may be in a negotiation with
13 them.

14 Mr. Bishop's job is a little different.

15 MS. CAPELL: I appreciate that.

16 SENATOR BRULTE: I just want to be clear as to
17 what the process is here.

18 You're testifying that he should be holding a
19 hearing.

20 He is suggesting that he will when XYZ is done,
21 and I'm just trying to make sure I understand what that XYZ is.

22 MS. CAPELL: Well, that would be helpful to us as
23 well.

24 We are concerned, that is, in the plant closures
25 of the early 1980s, we will literally show up one day to find
26 closed facilities.

27 CHAIRMAN LOCKYER: They can't do that, right,
28 without a prior --

1 MR. BISHOP: They cannot do that.

2 MS. CAPELL: What's the notice process?

3 MR. BISHOP: They have to file what is called a
4 notice of material modification with the Department, and that is
5 public filing.

6 SENATOR BRULTE: Has Kaiser filed that?

7 MR. BISHOP: No.

8 SENATOR BRULTE: When they file that, when will
9 you hold your hearing, the next day, 30 days later? What's the
10 policy?

11 MR. BISHOP: There is no policy, because I think
12 until I became Commissioner, while there was the authority,
13 public hearings were not held.

14 I do want to clarify. I don't want to be unfair.

15 In the response that came out in July, it did
16 suggest that we did not have the authority. I disagree with
17 that position. It came out, I think, after I'd been
18 Commissioner three or four weeks.

19 CHAIRMAN LOCKYER: You have people in your
20 organization that keep sending letters that are not authorized.
21 You've got to control the stamps, or something.

22 MS. CAPELL: Sign your own letters.

23 CHAIRMAN LOCKYER: You think you have that
24 authority?

25 MR. BISHOP: I do have the authority.

26 CHAIRMAN LOCKYER: It's your intention to
27 exercise it when you get the filing.

28 MR. BISHOP: And I have exercised it in the past,

1 and I intend to exercise it.

2 CHAIRMAN LOCKYER: When is the last time you
3 exercised it?

4 MR. BISHOP: February and March, I guess,
5 February.

6 CHAIRMAN LOCKYER: The mergers?

7 MR. BISHOP: Yes.

8 CHAIRMAN LOCKYER: Have you had any HMO file
9 material change notices while you've been Commissioner?

10 MR. BISHOP: Yes, I think we've had in the
11 neighborhood of 20 to 30.

12 CHAIRMAN LOCKYER: Have those provoked public
13 hearings?

14 MR. BISHOP: No, I don't think all of them rise
15 to the level of public -- public concern.

16 Anybody can write to us and comment on those
17 filings. They are public filings. If they do comment on them,
18 we do look at those comments.

19 CHAIRMAN LOCKYER: Has there been a public
20 hearing in connection with any of those 20?

21 MR. BISHOP: Well, the ones that we approved, the
22 mergers, which was four sets of companies, two separate
23 transactions.

24 CHAIRMAN LOCKYER: Ms. Capell.

25 MS. CAPELL: Merely to note the material
26 modifications are among 3 million documents, and that does
27 require a degree of attentiveness to filings with the Department
28 that places a substantial burden on any consumer group or union

1 wishing to track this, that we track every material
2 modification.

3 CHAIRMAN LOCKYER: I'd recommend that somebody
4 look at the previous 20, because that should be something you
5 can find, and see if any of them are substantial enough that you
6 would have wished for some public hearing in a more formal
7 way.

8 MS. CAPELL: Thank you.

9 Two additional points, if I might. Senator
10 Rosenthal spoke to the quality of care efforts by Commissioner
11 Bishop's predecessor.

12 I would note that those quality of care efforts
13 were less than satisfactory from our perspective. No
14 representatives of labor were included, and consumer
15 representatives were included very late in the process.

16 CHAIRMAN LOCKYER: This was his predecessor?

17 MS. CAPELL: Yes, and I will just -- if these are
18 to be -- we have not seen any efforts parallel to this in the
19 past eleven months, but found those efforts, which were chaired
20 by a physician from Kaiser, to be somewhat lacking in the fair,
21 and impartial, and thoughtful approach that Mr. Bishop has been
22 speaking to today.

23 CHAIRMAN LOCKYER: Well, I might point out, just
24 to advertise, that this task force that we've all appointed
25 to -- the Governor, the Speaker, myself. The Rules Committee
26 is the only group that's appointed any employee, but we're the
27 only appointing authority of the three that's done that.

28 MR. BISHOP: If I might, there is a statute which

1 establishes a Health Care Advisory Committee for the
2 Commissioner.

3 Many of the positions are defined by statute very
4 specifically. There are public members; there are vacancies. I
5 have on numerous occasions solicited as publicly as I can people
6 to submit their applications.

7 CHAIRMAN LOCKYER: We're going to loan you Nancy
8 Michel to help out, get some public members in there.

9 MS. CAPELL: And it would certainly be a historic
10 moment if a representative of the Service Employees
11 International Union was appointed by Governor Wilson.

12 CHAIRMAN LOCKYER: That would be historic.

13 MS. CAPELL: Yes, we agree with that.

14 SENATOR BRULTE: That's not the only word you
15 could use.

16 CHAIRMAN LOCKYER: Hysterical, historical.

17 MS. CAPELL: With regard to the use of the Joint
18 Commission on Accreditation of Health System, the Department of
19 Health Services several years ago made a practice of surveying,
20 shortly after JCHO had surveyed hospitals.

21 The Department of Health Services Licensing
22 Certification Division, which surveys hospitals on a routine
23 basis, found that JCHO, which certified hospitals' eligibility
24 for Medicare and Medi-Cal reimbursement under the federal
25 government, routinely failed to assure that federal regulations
26 were complied with. That is, that literally the day after the
27 JCHO survey was done, hospitals were out of compliance with the
28 federal regulations.

1 CHAIRMAN LOCKYER: Is that what JCHO's supposed
2 to do?

3 MS. CAPELL: Yes, yes.

4 And the Department of Health Services conveyed
5 this information to the Health Care Financing Administration.
6 This arose because there have been numerous attempts to
7 eliminate the independent scrutiny by the Department of Health
8 Services of hospitals in favor of using the Joint Commission on
9 the Accreditation of Health Systems.

10 This is something we have consistently opposed
11 regarding the industry dominated. We were -- and we also note
12 that the Wilson administration found that their surveys were
13 error prone at best.

14 CHAIRMAN LOCKYER: Ms. Capell, as I understood,
15 and maybe I misunderstood, the purposes to which Mr. Bishop
16 contracted with those groups, it was more sort of case
17 assessment, I guess would be the description. That is, looking
18 at whether the treatment was appropriate, and not whether the
19 hospital -- did I misunderstand?

20 MR. BISHOP: Again, it's a joint contract with
21 the IMQ.

22 CHAIRMAN LOCKYER: What were they doing?

23 MR. BISHOP: They do the on-site leg work.

24 CHAIRMAN LOCKYER: It would be like accrediting a
25 hospital, in effect.

26 MR. BISHOP: They don't make the decisions.

27 CHAIRMAN LOCKYER: But they look at the data.

28 MR. BISHOP: The data. They go out and review

1 patient charts, do the interviews, things like that.

2 MS. CAPELL: I would merely suggest that within
3 this very administration, there was substantial documentation
4 that they did an inadequate job with that.

5 CHAIRMAN LOCKYER: In what way were they
6 inadequate?

7 MS. CAPELL: I apologize. It's been three or
8 four years since I reviewed it.

9 My recollection is that it related directly to
10 quality of care issues because those -- that it arose around
11 those issues in hospitals that -- in the provision of safe care
12 by physicians and nurses.

13 SENATOR BRULTE: Would you suggest that there may
14 be a growing concern over abuses within HMOs? Would that be an
15 honest statement?

16 MS. CAPELL: That would be fair, yes.

17 SENATOR BRULTE: Are you suggesting that this
18 agency may be a little bit slow to recognize that and react to
19 it?

20 MS. CAPELL: Yes.

21 SENATOR BRULTE: Would you also then, having
22 looked at the record of the Legislature over the last three or
23 four years, make the same charge against the Legislature? Three
24 years ago, the Legislature showed a great deal of unwillingness
25 in dealing with HMO abuses, and over the last year and this
26 year, there is a growing understanding within the Legislature.
27 There's a geometric increase of bills to deal with those abuses.

28 MS. CAPELL: I would say that the Legislature is

1 responding to its constituents in that regard, yes.

2 CHAIRMAN LOCKYER: Certainly once the Pringle
3 majority was broken up. Prior to that, no anti-HMO bill could
4 ever get through the Assembly.

5 MS. CAPELL: The Senate was, of course, always
6 more --

7 CHAIRMAN LOCKYER: Well, we had Rosenthal, who
8 kept pumping them out.

9 MS. CAPELL: And getting some of them through the
10 Assembly, to our astonishment.

11 SENATOR BRULTE: My sense is, because I think
12 some of the points that your organization raises are legitimate,
13 although clearly on the public hearing I think you may have a
14 difference of opinion on what is the timeframe on that.

15 It seems to me that there's a growing recognition
16 of abuse, and maybe this agency, like the Legislature, is
17 trailing in terms of dealing with it.

18 But, you know, sometimes that's the way the
19 system works.

20 My sense is that this is an agency that is much
21 more willing to look into this than it was three or four years
22 ago.

23 MS. CAPELL: Part of the reason why we raise
24 these concerns in every venue that is available to us is to
25 assure that the enforcement is energetic.

26 We've supported legislation with regard to
27 managed care. The most constant question we get from our
28 members, and I must also say in working directly with consumers

1 is, why bother? It won't be enforced anyway.

2 So, that skepticism is very pervasive. I think
3 it is a --

4 SENATOR BRULTE: That may not be a fair -- I
5 mean, your organization has certainly supported ballot
6 initiatives that didn't get popular support in this state.

7 MS. CAPELL: Yes.

8 SENATOR BRULTE: That doesn't mean they're wrong.
9 It just means that maybe they're ahead of the timeframe.

10 MS. CAPELL: I think maybe six months ahead or
11 so, yes.

12 CHAIRMAN LOCKYER: And \$3 million.

13 MS. CAPELL: That was my estimate, yes, sir.

14 CHAIRMAN LOCKYER: Other comment?

15 MS. WOODWORTH: Good evening Senators and poor
16 suffering staff. It's almost 8:00 o'clock. I'll be brief.

17 My name's Carla Woodworth. I'm the Executive
18 Director for the California Physicianss Alliance. We represent
19 physicians who are health policy analysts and advocates in
20 California. We include academic researchers, private
21 physicians, and physicians who work in large managed care
22 organizations.

23 The Department of Corporations in California has
24 broad authority to protect the quality of care in managed care.
25 But in this era of radical changes in health care, we see little
26 or no effort by the Department of Corporations to improve and
27 enhance its enforcement.

28 For these reasons, we oppose the confirmation of

1 Keith Bishop as Commissioner of Corporations.

2 Thanks very much.

3 CHAIRMAN LOCKYER: Thank you.

4 Let me just jump in, because their letter is the
5 strongest of all of the ones we've received, which, among other
6 things, said, "What is going on in managed care today would not
7 be permitted in academic research because the prohibitions on
8 experimentation on human subjects would prevent it."

9 Pretty strong commentary in their letter.

10 MR. BISHOP: I have not seen their
11 letter.

12 CHAIRMAN LOCKYER: I'll give you a bunch.

13 Let me ask you to respond to one of the other
14 letters.

15 Mr. Hebler, Mark Hebler, who you know, of course,
16 as successful in suing HMOs, and I guess it might be the
17 appropriate time to thank Senator Rosenthal publicly because,
18 while he could have been appointed, that is, the Senator could
19 have been appointed to the task force, he was willing to go on
20 in an ex-officio role so that we could appoint Mr. Hebler, so
21 we'd have someone who had the kind of personal experiences he's
22 had, and hope that that will contribute to a good result.

23 He says in his letter, there have been all these
24 cases, nearly 140 other cases that he's handled, with, of
25 course, some knowledge of how HMOs are run as a result. "I have
26 never once received a call from a member of the Department of
27 Corporations requesting information about HMO regulation."

28 Doesn't that seem shockingly deficient?

1 MR. BISHOP: Well, I believe there has been
2 contact. These cases --

3 CHAIRMAN LOCKYER: That was March 26.

4 MR. BISHOP: These cases occurred before I was
5 the Commissioner. And I believe that there was contact between
6 Mr. Hebler and the Department before I was the Commissioner. I
7 believe my general counsel has, since I was Commissioner,
8 informally invited Mr. Hebler to discuss his concerns.

9 I know that, not with respect to Mr. Hebler's
10 cases, but there have been cases that have come up in public
11 hearings and otherwise come to my attention. And I come back to
12 the office and I say, "Do they have a complaints with us?" And
13 we find out they don't. And I seek out those cases to find out
14 what's going on.

15 I do think that, as with many of the other
16 industries we regulate, you know, civil enforcement is another
17 way of redressing consumer problems. What we need is a
18 balanced regulatory program that also gives consumers the right
19 to pursue their actions on an individual basis.

20 CHAIRMAN LOCKYER: Well, I hope his statement is
21 inaccurate. You'll certainly see him at the meetings, if not on
22 the end of a telephone.

23 MR. BISHOP: I'll look forward to meeting him.

24 CHAIRMAN LOCKYER: He's a pretty interesting guy.
25 Actually, he appeared at the HMO conference they had most
26 recently, and I heard back from plan managers that they were
27 delighted to have him participate, that he was actually very
28 helpful in saying, "If you do this, I can't sue. If you do

1 that, I can." Kind of giving them some guidelines to observe
2 with respect to consumer behaviors.

3 Please, go ahead.

4 MS. COOPER: Thank you, Senator. My name is
5 Charlotte Cooper. I'll try to be very brief and respect your
6 time.

7 My name is Charla Cooper, and I am probably
8 infertile. The experts give me less than one percent chance of
9 ever having my own child.

10 It didn't have to be this way. Kaiser made a
11 mistake. And when we found out what happened, they steadfastly
12 refused to refer me to an outside specialist who might be able
13 to help me.

14 I appealed to the DOC and Commissioner Bishop
15 in July of 1996. They marked my case urgent, and responded to
16 me seven months later.

17 It's my understanding that state law requires
18 answers to these RFAs within six weeks, not seven months. It
19 was seven months that I waited, while my condition
20 deteriorated.

21 In February of this year, after Senator Rosenthal
22 wrote the DOC, they then responded. They found Kaiser in
23 violation of the Knox-Keene Act. Their wording is that there
24 were delays in diagnosis and treatment. The Department has been
25 unable to establish that these delays were in compliance with
26 the Knox-Keene Act. So, I guess they don't actually say that
27 there have been violations. They say that they're unable to
28 find that they're in compliance.

1 They also found that they were violating the
2 Knox-Keene Act by failure to process a complaint. A Kaiser
3 physician held my complaint in his office, basically hid it,
4 instead of having it processed.

5 CHAIRMAN LOCKYER: Who did? Kaiser?

6 MS. COOPER: Yes.

7 CHAIRMAN LOCKYER: I better give you Mr. Hebler's
8 phone number.

9 MS. COOPER: Medical malpractice attorney? I
10 have an attorney. The damages are in now.

11 CHAIRMAN LOCKYER: That's the only thing they
12 sometimes respect, is when they get slammed.

13 MS. COOPER: She may want to partner with
14 someone; who knows.

15 So, they found Kaiser in violation of the
16 Knox-Keene Act, but the Department did nothing that I know of to
17 punish Kaiser for these violations, and certainly nothing to
18 help me. They could have.

19 The Department is not enforcing the Knox-Keene
20 Act. They're not doing their job. I'm only one of many.

21 We have a health care crisis in California right
22 now, and the DOC isn't enforcing legislation.

23 I know it's a big job in response to Senator
24 Lockyer's considered inquiry. I think it's huge. I think that
25 the HMOs are absolutely running amok. There's a lot of pain out
26 there, and there are people that have worse situations than I
27 do, but it's a crisis.

28 And I ask you, please, not to let this happen in

1 our state, not to let this continue to happen.

2 CHAIRMAN LOCKYER: Ms. Cooper, the problem is, we
3 kind of bury all the correspondence, or at least a lot of it, in
4 our file, so I've had a chance to go through those, as a case,
5 to figure out what was going on here.

6 MS. COOPER: Mine is one of many. I have a
7 personal case, but obviously, this is much vaster than me.
8 There's so many people like me.

9 CHAIRMAN LOCKYER: I understand that. As
10 somebody who's been a Kaiser member for 30 years, I worry about
11 what kind of care I'd get if they didn't know I was a Senator.

12 It's clearly getting worse and worse in the last
13 few years, just from own staff, my neighbors, the friends I see.
14 There is such deterioration in that system that I used just
15 joke and call it, "the best of Soviet medicine."

16 It's now worse than Soviet medicine, in my view.

17 But who is Dale Redmond, CSU legal consultant?

18 MR. BISHOP: Dale Raymond? She is an
19 administrative law judge that we hired to help review
20 complaints.

21 Again, when I came on board, we had six medical
22 consultants available to us, which is about the time her
23 complaint came in.

24 CHAIRMAN LOCKYER: How many do you have now?

25 MR. BISHOP: We have around 50. We need more.

26 CHAIRMAN LOCKYER: Ms. Raymond is the one who
27 responded to Ms. Cooper.

28 MR. BISHOP: She's an ALJ, but her case was also

1 reviewed by a medical consultant, or a medical -- a doctor.

2 I have taken a personal interest in your case.

3 MS. COOPER: Is there any particular reason it
4 took seven months to respond to an urgent complaint?

5 MR. BISHOP: We have been trying to beef up our
6 resources.

7 When your complaint came in, we had a handful of
8 medical consultants available to us.

9 MS. COOPER: How many urgent complaints?

10 MR. BISHOP: I don't recall. Your complaint, I
11 met with Ms. Raymond on numerous occasions to discuss your case,
12 your complaint.

13 It's one of the kinds of complaints that makes me
14 understand why this job is so important to people.

15 CHAIRMAN LOCKYER: What does this mean, point
16 seven? It's a letter to her, and I assume, since we have it,
17 you don't mind it being discussed.

18 MS. COOPER: Fine.

19 CHAIRMAN LOCKYER: And I think maybe you
20 misunderstood what I was saying earlier, that very often there's
21 two ways to regulate corporate behavior: government oversight
22 that tries, and it's almost always inadequate; and vigilante
23 attorneys who sue them, which is often a better remedy.

24 So, I'm recommending that to you.

25 MS. COOPER: Right. I absolutely understand, and
26 there will be a civil case. But the point is that now, we had
27 to wait until the damages were in.

28 CHAIRMAN LOCKYER: It's a medical problem, I

1 understand that.

2 But my point is, to fix the system, a lot of
3 times only thing they respect is when they get hammered with
4 punitive damages, and Kaiser deserves it. That's all I'm
5 saying.

6 But Mr. Bishop, what does this mean: "Neither of
7 your" her, "January 1996 complaint letters were referred to the
8 health plan's customer member services department."

9 Who did you write those letters to?

10 MS. COOPER: I wrote them to Dr. Ira Golditch,
11 who is the Chief of OB-GYN at Kaiser Permanente in San
12 Francisco.

13 Dr. Golditch phoned me at home and told me that
14 Kaiser wouldn't do anything. Rather than -- it wasn't his
15 decision -- rather than process the complaint. He kept the
16 complaint in his office. He hid it instead of processing it,
17 in direct violation of the Knox-Keene Act, which I only realized
18 later.

19 He led me to believe that his answer was a final
20 one. It was not a final one. He was -- he was obstructing the
21 law.

22 CHAIRMAN LOCKYER: What Raymond says is, they
23 can't find any evidence of that, apparently. Do you know?

24 MR. BISHOP: Could you read me --

25 CHAIRMAN LOCKYER: Raymond says, "Neither of your
26 '96 complaint letters were referred to the health plan's
27 customer member services department. The Department," yours,
28 "has been unable to establish that this inaction was in

1 compliance with the Knox-Keene Act."

2 It's sort of a triple reverse.

3 MR. BISHOP: Yes, and what we're saying is --

4 CHAIRMAN LOCKYER: Unable to establish that
5 inaction was in compliance.

6 MR. BISHOP: In other words, that the plan
7 complied with the law.

8 MS. COOPER: That's what they do, instead of fine
9 violations.

10 CHAIRMAN LOCKYER: Is this Bulgarian translated
11 into English?

12 MR. BISHOP: This is -- this was not the last
13 word on this complaint.

14 Now, I am sensitive to the rights of Ms. Cooper,
15 and I don't want to jeopardize those --

16 CHAIRMAN LOCKYER: But we're not talking about
17 the medical history.

18 MR. BISHOP: -- but I can say that after not only
19 meeting with Ms. Raymond during the course of the review, after
20 there was response to it, I directed that this complaint be
21 referred to our Enforcement.

22 CHAIRMAN LOCKYER: Do they have it now?

23 MR. BISHOP: They have it now.

24 CHAIRMAN LOCKYER: Anything happen yet?

25 MR. BISHOP: I would rather not say publicly.

26 CHAIRMAN LOCKYER: Can you tell me if there's a
27 result from referring it to your --

28 MR. BISHOP: I have gotten advice in writing

1 about their evaluation of the case from my Enforcement Division.

2 MS. COOPER: Is there any ideas about what that
3 advice is?

4 MR. BISHOP: All our enforcement decisions are
5 confidential as an enforcement agency.

6 SENATOR BRULTE: That's by statute?

7 MR. BISHOP: Yes, by statute.

8 SENATOR BRULTE: Let me ask a couple questions.

9 First of all, Ms. Cooper, I'm incredibly sorry
10 you had to go through this.

11 Let me also tell you, I don't go to HMOs because,
12 it costs more to go someplace else, but there may be quality of
13 care issues.

14 What would you like to see happen to the
15 physician? You suggested that there's not been a punishment
16 yet. What do you think --

17 MS. COOPER: There are two physicians involved in
18 my case.

19 All I wanted was referrals. I offered to sign-off
20 on a medical malpractice claim if they would just get me to Dr.
21 Mary Lake-Poland at Stanford University, who would try to take
22 care of these things.

23 What would I like to have happen to the
24 physicians now?

25 SENATOR BRULTE: Well, you had made the comment
26 that you thought that there should be some kind of punishment,
27 and I just want to be clear as to what you think the appropriate
28 punishment --

1 MS. COOPER: For my particular case?

2 SENATOR BRULTE: Both Kaiser and the physician
3 that sat --

4 MS. COOPER: Well, that's difficult. They --
5 obviously, they clearly violated the Knox-Keene Act. I mean,
6 it's right here, basically, although they use, you know, this
7 strange language saying that they're unable to find that they're
8 in compliance. You know, they're violating the Knox-Keene Act.

9 But my case is just one of so many where this is
10 happening. I don't know that they should take any specific
11 action on my case if they don't on other violations.

12 The audit of Kaiser, which has been mentioned
13 here, shows much more egregious systemic problems and violations
14 of the Knox-Keene Act, and they've been there forever.

15 And, you know, the Commissioner or the DOC told
16 Kaiser in writing that they had until February of this year, and
17 now it's August.

18 Those violations are affecting hundreds if not
19 thousands of people, you know. Maybe that's where the
20 enforcement should be.

21 Mine is just one example of what's going on.

22 SENATOR BRULTE: That's why I specifically --

23 MS. COOPER: I don't know if I answered your
24 question or not.

25 I think something has to be done. I appreciate
26 the fact that the Senate is doing, you know, is involved in this
27 extensive legislation, and I think that we all appreciate that.

28 But I also think that the Knox-Keene Act is there

1 for a reason, and these HMOs are just -- they're way, way, way
2 out of control.

3 SENATOR BRULTE: Maybe I could then direct the
4 question to Mr. Bishop, without going into attorney-client, or
5 going through any privacy issues here, you have a specific
6 complaint. What would the range of action against Kaiser be?
7 What could the range of action against Kaiser be if they were
8 found to have been the proximate cause of the sterility?

9 MR. BISHOP: We can take a wide range of
10 actions. We can fine the plan. We can freeze enrollment on
11 the plan. We can issue administrative cease and desist orders.
12 We can go to court and get a civil injunction. We can go to
13 court, as we did with Western Dental, and ask that a receiver or
14 a monitor be appointed over the plan.

15 So, there's a wide range of kinds of steps that
16 we can take to see that the Knox-Keene Act is enforced.

17 SENATOR BRULTE: Do you take it against the plan
18 or the physician or both.

19 MR. BISHOP: That's a point I want to make clear.
20 We do not license physicians. We license the plan, so our
21 action would be against the plan.

22 CHAIRMAN LOCKYER: Have you concluded whatever
23 review in your Enforcement Unit would be expected pursuant to
24 this complaint?

25 MR. BISHOP: A number -- a complaint, if it gets
26 referred to Enforcement, a decision could be made to take action
27 on that individual complaint, or it may become the basis, if we
28 see a lot of --

1 SENATOR BRULTE: You look for the pattern --

2 MR. BISHOP: -- and then it becomes, you know,
3 where we can say, there's a pattern in practice here. Of
4 course, that becomes a much more compelling case for broader
5 remedies, like a receivership, or a monitor, or a freeze on new
6 enrollments.

7 CHAIRMAN LOCKYER: Have you closed the file with
8 respect to Ms. Cooper?

9 MR. BISHOP: No.

10 MS. COOPER: This says it's closed. Your
11 response to me said it was closed, and I wrote you a very
12 lengthy letter a month ago, which I have no response from at
13 all.

14 CHAIRMAN LOCKYER: Ms. Cooper, which response? I
15 don't think we have that correspondence. What date?

16 MS. COOPER: It's dated February 14th, right
17 after Senator Rosenthal wrote them.

18 CHAIRMAN LOCKYER: This is the Dale Redmond
19 letter?

20 MS. COOPER: Yes, it is the Dale Redmond letter.
21 And it says, "Therefore, your RFA will be closed."

22 I wrote a very extensive letter, which I just
23 gave to you, Senator.

24 CHAIRMAN LOCKYER: But it does say in that
25 letter, your RFA may be referred to the regulatory or
26 enforcement staff for further review, which is what's happened,
27 apparently.

28 MR. BISHOP: Yes.

1 CHAIRMAN LOCKYER: So, what I hear is, this isn't
2 closed, Ms. Cooper.

3 MS. COOPER: Well, you can see that it's rather
4 ambiguous.

5 CHAIRMAN LOCKYER: There's some reason not to be
6 more publicly explicit about what enforcement possibilities
7 there are here?

8 I don't know if you can talk to her on her own,
9 but to give her some clarification about the future.

10 MR. BISHOP: Unfortunately, and I understand
11 this, the process is not nearly --

12 CHAIRMAN LOCKYER: It's not closed.

13 MR. BISHOP: -- closed, and it's not -- when it
14 goes over to the enforcement side, it's not as public as one
15 would hope. But I think there are good public policy reasons
16 for that.

17 SENATOR BRULTE: Is that statutorily driven?

18 MR. BISHOP: Yes.

19 SENATOR BRULTE: So, the reason that it's private
20 is because the Legislature --

21 MR. BISHOP: Yes.

22 CHAIRMAN LOCKYER: Well, and the United States
23 Supreme Court, a privacy act.

24 MS. COOPER: So, there's some possibility that
25 there might, in fact, be some action, but certainly no
26 guarantee.

27 CHAIRMAN LOCKYER: The Government Code Section
28 62.24(f) keeps the documents private.

1 SENATOR HUGHES: Has this been going on? I've
2 been looking through various chronologies and statements. Has
3 this been going on since '94?

4 MS. COOPER: Well, it depends on how you want to
5 date it. In terms of when I first complained, or when I first
6 presented, or you know.

7 I mean, there was a combination between the
8 physician, Dr. Golditch, holding a formal complaint in his
9 office in direct violation of the Knox-Keene Act for over six
10 months, and then the DOC taking seven months. There was over a
11 year of, as far as I can see, illegal delay in this case, and an
12 illegal delay which I couldn't afford.

13 CHAIRMAN LOCKYER: Ms. Cooper, was this at the
14 San Francisco Kaiser?

15 MS. COOPER: Yes.

16 SENATOR HUGHES: From I what I have here, it's
17 been going on since December of '94?

18 MS. COOPER: Yes, if you want to date it, yes.
19 The whole chronology, yes.

20 SENATOR HUGHES: All right, thank you.

21 CHAIRMAN LOCKYER: Thank you, Ms. Cooper. I know
22 it's difficult to come up and talk about these things.

23 MS. COOPER: Well, it is.

24 I hope that you continue not only to work in
25 terms of bills, but also in terms of the Knox-Keene Act.

26 I understand your concerns with the fact that
27 this may be an overwhelming job, and a very difficult job. I
28 believe it is. And I think that that's a function of what's

1 going on in the market place.

2 But I think that something has to be done quite
3 quickly.

4 SENATOR BRULTE: Can I ask one last question?

5 We have an appointee candidate before us who says
6 that when he came on board, there was six reviewers. And
7 because he saw a need, he has almost increased that by, what is
8 that, a thousand percent? From six to fifty? Sixty would be a
9 thousand percent.

10 MS. COOPER: I have heard quite a bit of
11 testimony here that, quite honestly, as an ordinary citizen, I
12 find shocking.

13 This was an urgent complaint. It was marked
14 urgent. There was a reason that it was marked urgent.

15 CHAIRMAN LOCKYER: Who marks them, the consumer?

16 MS. COOPER: No, the DOC.

17 CHAIRMAN LOCKYER: They decide urgent or not?

18 MS. COOPER: Yes.

19 SENATOR BRULTE: Mr. Bishop, did you have a
20 backlog when you became --

21 CHAIRMAN LOCKYER: Let us know how many urgents
22 you have.

23 SENATOR BRULTE: Did you have a backlog of
24 complaints? I mean, you obviously found a compelling reason to
25 take a staff from --

26 MR. BISHOP: We had a huge backlog, and we've cut
27 it by more than 70 percent. And I still don't think that's good
28 enough, but we made a lot of progress in the time I've been

1 here.

2 MS. COOPER: But there's very few urgent
3 complaints, at least that's my understanding.

4 CHAIRMAN LOCKYER: Let's find that out, how many
5 there are, so we'll at least know, and whether the process of
6 designating urgent or not is adequate.

7 Thank you.

8 MS. COOPER: Sure, thank you, Senators.

9 CHAIRMAN LOCKYER: Other comment?

10 MS. GODFREY: Thank you. My name is Jo Joshua
11 Godfrey, and I am glad that I have the opportunity to come here
12 today to tell you about my experiences with this department.

13 When I filed my complaint in October of '94, I
14 was ignored by the Department of Corporations. It took several
15 months and many complaints before the Department ever began to
16 investigate what my health plan had done.

17 I find it inconceivable that this Department's
18 complaint form said if I had any legal representation, then no
19 investigative action could be taken.

20 Finally, after about a year and a half, and
21 pushing and pulling, I received a letter from the Department of
22 Corporations that said they couldn't share the outcome of their
23 investigation with me because it was confidential. And that
24 while they would monitor my health plan, they were closing my
25 case.

26 I am here to urge that the Senate not reconfirm
27 Mr. Keith Bishop's appointment as head of the Department of
28 Corporations. It is my personal experience with this Department

1 that has brought me to this point, a point in which I have
2 personally witnessed the Department fail in its regulatory
3 function of overseeing HMOs.

4 Had they done their job properly, and in
5 accordance with the proscribed charter for the Department of
6 Corporations, many persons abused by the HMO system, myself and
7 my family included, would not be victims today. I would be
8 living a normal life instead of spending it trying to fix a
9 system that has totally failed, hoping and praying that there
10 could be accountability and justice for my family and for every
11 family who will be saved and not have to experience this pain.

12 Over the past four years, my family and I have
13 been subjected to what amounts to a never-ending nightmare as
14 perpetrated by Signa Health Plans of California, our HMO. While
15 we fought to get medical treatment we paid our insurer for, we
16 were lied to by them about our health conditions. They tried
17 their best not to treat us. And when we finally caught them,
18 after years of suffering, they tried to forge our medical
19 records to cover their conduct, and conspired with other health
20 care providers to help them cover up.

21 However, in their haste, they placed the tumor in
22 the wrong lung, on the wrong lobe. They covered up the fact,
23 and tried to persuade me that I was well, when all the time it
24 should have been evident that I had a tumor in my left lung.

25 Then after the tumor's removal, they tried their
26 best to persuade me it was benign, to not have to pay for
27 appropriate follow-up treatment of a malignant tumor.

28 They failed to inform my husband that he had a

1 pulmonary nodule in his lung that has been present for some 19
2 months and did not provide the appropriate treatment. His
3 prognosis, we have been told, is not very good at all.

4 I recently sought assistance from the Attorney
5 General's office, only to learn that the case the Department
6 kept writing to me about was a nonexistent file, when the
7 Attorney General's office inquired about it.

8 It was stated the Attorney General has wanted to
9 prosecute HMO cases in the past, but the Department of
10 Corporations would not authorize the prosecution.

11 The Attorney General's office said it could not
12 act without the Department's authorization.

13 I presented my findings to my State Senator, and
14 he helped me author language to try to change the law.

15 I find it totally inconceivable that this
16 do-nothing department has been permitted to continue as a
17 regulatory arm of the state for as long as it has. In fact, on
18 Good Friday, I finally had an admission from them that what
19 happened to our family was so egregious that the case was
20 referred to the Enforcement Division for some kind of action.

21 I was told that the Department found a problem
22 with Signa's license, and so they ended its operation of its 19
23 Southern California clinics.

24 I believe a deal was made with Signa, and they
25 got to pretend they were selling these clinics, when in fact it
26 sold them back to the same persons who had previously owned
27 them, except they were operating under a different name.

28 They still operate with the same providers, doing

1 the same things they always did.

2 CHAIRMAN LOCKYER: I'm sorry, but what's the
3 chain of clinics?

4 MS. GODFREY: Signa.

5 CHAIRMAN LOCKYER: Are they subcontracting? I
6 missed how it changed hands.

7 MS. GODFREY: They sold them to a company called
8 Friendly Hills. That was the one in the newspaper that had the
9 \$10.9 million fine for killing a 30-year-old woman.

10 I was also informed that my case has now moved
11 from the Enforcement Division all the way to the front office,
12 whatever that means.

13 CHAIRMAN LOCKYER: You say it has been?

14 MS. GODFREY: That's what they said.

15 What happened, what about all the other HMOs that
16 have made news headlines abusing the innocent? What happened to
17 Signa was no deterrent. I know; I have fought the fight.

18 This is a shameful situation. I was abused by
19 my HMO, lied to, and abused again by their insurance company,
20 Farmers Insurance, and finally became a victim of a legal system
21 that makes it so costly and almost impossible for any victim to
22 seek retribution against them.

23 It is a sad state of affairs that this
24 victimization has no end in sight. It is precisely this, the
25 victimization of the innocent, that is driving the need for a
26 cure. No more bandaids.

27 Let's face it. This has been a nonregulated
28 industry, and my family's story is only a portrait of this

1 injustice. While it will be impossible to ever repair or repay
2 what has been stolen from us -- our dignity, our business, years
3 of our lives, scarring that our children will never fully
4 recover from -- we are crying out to you now.

5 Justice and accountability to ensure that nothing
6 like this could ever happen again will be the beginning of
7 helping us and countless victims and their families start to
8 rebuild their lives, safe in the knowledge of knowing that
9 millions of innocent families will be spared and give meaning to
10 this long, lonely road that we have been forced to walk.

11 Therefore, I urge you to oppose Mr. Bishop's
12 confirmation. Thank you.

13 CHAIRMAN LOCKYER: Is it Godfrey? Is that right.

14 MS. GODFREY: Yes.

15 CHAIRMAN LOCKYER: Thank you, Ms. Godfrey.

16 MS. GODFREY: Thank you.

17 CHAIRMAN LOCKYER: Are you familiar with this
18 case? Can you bring us up to date on it at all?

19 MR. BISHOP: I am generally familiar with it, but
20 again, I think it's very difficult because I am conscious of the
21 rights of -- not only the privacy rights, but any legal rights
22 that these complainants may have that may be jeopardized in
23 terms of discussing them in this kind of forum.

24 This is a case that does go back many, many
25 years.

26 SENATOR BRULTE: I have two questions of
27 Mr. Bishop.

28 Following up the two statements the previous

1 witnesses made, does the Attorney General need to check with you
2 before he makes a prosecution.

3 MR. BISHOP: Well, by statute, the Department of
4 Corporations, unlike many departments in state government,
5 represents itself in civil actions. So, most state agencies are
6 represented by the Attorney General. When they want to go into
7 trial court, it's the Attorney General who represents them.

8 The Legislature has granted us the authority to
9 represent ourselves, and our lawyers in the Enforcement Division
10 represent us in court.

11 So, I'm not really aware of the Attorney General,
12 since we've been doing it, becoming involved in the enforcement.

13 SENATOR BRULTE: And the second question, the
14 witness alluded to the fact that she had received communication
15 from DOC that if there was legal action pending, your hands were
16 tied.

17 CHAIRMAN LOCKYER: On the form?

18 MR. BISHOP: I'm not sure.

19 This goes back, like, four years.

20 SENATOR BRULTE: I understand. This is 1994,
21 long before you got there.

22 MR. BISHOP: I'm really not sure.

23 CHAIRMAN LOCKYER: What's the current complaint
24 form say? Have you looked at it?

25 MR. BISHOP: The current complaint form? It
26 doesn't say that.

27 MS. GODFREY: Consumers Union went to Los Angeles
28 and met with the Department --

1 CHAIRMAN LOCKYER: But you said there's a form --

2 MS. GODFREY: The one that they gave me, the
3 Department of Corporations.

4 SENATOR BRULTE: Says what?

5 MS. GODFREY: I have it with me.

6 SENATOR BRULTE: I'd like to see it. That would
7 be very helpful.

8 CHAIRMAN LOCKYER: Show Mr. Bishop.

9 MR. BISHOP: But in my view, the fact that a
10 civil action or arbitration proceeding is pending would not
11 deprive us of jurisdiction to take the complaint.

12 CHAIRMAN LOCKYER: I wouldn't think so.

13 MR. BISHOP: I can't speak for what was the case
14 a few years ago.

15 SENATOR HUGHES: It also seems to me significant
16 that both of these cases were in 1994. Whoever was on the watch
17 then --

18 CHAIRMAN LOCKYER: I thought Ms. Cooper was more
19 recent.

20 SENATOR HUGHES: No, she started in 1994. That's
21 the first piece of paper I saw from her in our packet.

22 CHAIRMAN LOCKYER: Go ahead and look for the
23 form, and we'll take some more comment.

24 MS. GRIFFIN: Mr. Chairman, Members of the
25 Committee, Mary Griffin, representing the American Medical Group
26 Association, and in the interest of time, I'm going to keep this
27 very short.

28 I want to make sure, because I know they got

1 their letter in very late, that you know we do support Mr.
2 Bishop's confirmation.

3 Let me tell you, we don't always agree with the
4 Department. We are providers, and we are going to have some
5 disagreements.

6 But what I wanted to do is point out the fact
7 that the openness of the Department has been something we do
8 appreciate. I call there and try to get some answers from time
9 to time. I'm able to get those answers. I'm able to sit down
10 and meet with those people at the highest levels. So, I really
11 appreciate that openness, and it is appreciated by the members
12 of my organization.

13 So, in that vein, I would certainly support the
14 Commissioner being appointed.

15 Thank you.

16 SENATOR BRULTE: Mary, I just want to ask you a
17 question as somebody who's followed this. You've been lobbying
18 for medical --

19 MS. GRIFFIN: Just a couple of years.

20 SENATOR BRULTE: I don't want to go there.

21 Clearly, anyone who's even a casual observer
22 knows that this is an agency that has had not an aggressive
23 history.

24 For those of us who don't spend all our time on
25 medical issues, is Mr. Bishop and the changes he's bringing in
26 the relatively short time he's been there, is he taking the
27 enforcement and the administrative process in the right
28 direction, or is he taking it in the wrong direction?

1 MS. GRIFFIN: I think very clearly from our
2 perspective, he is taking it in the right direction.

3 Let me comment, though, that I don't think we
4 think, or anybody in this Committee thinks it's perfect.

5 I was watching. I may not have been sitting
6 here, but I've been watching all the hearing. And I couldn't
7 agree more with what Steve Thompson said and the Chair alluded
8 to, they could certainly use some additional help over there.

9 So, anything anybody in this Committee can do to
10 get the Section 28 approved would be helpful.

11 CHAIRMAN LOCKYER: That's the imaging request.

12 I wanted to ask, and now's a good time to do it,
13 Mr. Bishop, have you asked Finance for enforcement budget
14 augmentation?

15 MR. BISHOP: I think the one issue, maybe the
16 only issue in this whole area in which I think everyone would
17 agree is the need for additional resources. And I agree with
18 that.

19 And I am studying closely and putting together a
20 plan that will bring additional resources, not only to
21 enforcement, but to our surveying process, and to our consumer
22 complaint process. It's the one area that people do agree on.

23 CHAIRMAN LOCKYER: Mr. Bishop, I'm going to
24 suggest to the Governor that, not the reinventing the wheel of
25 the whole complaint process and so on that may take more time,
26 but it's obvious from all the commentary that the current
27 enforcement budget is inadequate. And that needs to be
28 addressed before May 22nd.

1 MR. BISHOP: I'm aware of that.

2 CHAIRMAN LOCKYER: In some way. You have people
3 that have to agree to that.

4 SENATOR BRULTE: They may be listening in.

5 CHAIRMAN LOCKYER: The Governor's Office.

6 But I'll tell you, getting a confirmation for you
7 out of the Senate will be one of the harder tasks I've had. And
8 it's not because you haven't been forthcoming, and open, and
9 clearly committed to managing and creating a better culture in
10 this Department, and one that has greater respect for consumer
11 needs, but there are so many controversies associated with
12 this.

13 I think unless there's active enforcement
14 augmentations, they're going to shoot the messenger. I don't
15 want to do that, so we've got to push them and try to see what
16 we can do, short of the whole redesign that may take a longer
17 time.

18 This is the form. Have you seen it? On the
19 form, basically it says, "The Department cannot intervene in
20 this complaint if I'm represented by counsel or if litigation is
21 pending."

22 You might check to see if the same one is still
23 being used.

24 MS. GODFREY: I would like to say that because of
25 this form, I went unrepresented, believing that something would
26 happen to the health plan. I had to file my own complaints in
27 court. Then, it is just like a nightmare. The whole thing's
28 like a nightmare.

1 SENATOR BRULTE: It's the top paragraph.

2 CHAIRMAN LOCKYER: Right at the top of that page
3 that was open there. The paragraph says mostly correctly what
4 the Department can and can't do. It's the last sentence or two
5 that's the problem.

6 Could you let us know if that's been deleted from
7 the information you give to people now?

8 MR. BISHOP: Okay. It's not our policy.

9 CHAIRMAN LOCKYER: Let's check the form just so
10 we know. Thank you.

11 MS. GODFREY: One other thing I'd like to say.

12 CHAIRMAN LOCKYER: You'd better come up to the
13 mike if you want to add something.

14 MS. GODFREY: Also, this health plan, the things
15 it has done to my family since, is like unbelievable. And I
16 think that I have enough evidence that, if somebody looks at it,
17 they'll be able to see the truth.

18 Plus, I have tape recorded conversations at the
19 height of the abuses. It wouldn't talk with this health plan
20 unless they let me tape record the conversations, and I have
21 those.

22 Thank you.

23 CHAIRMAN LOCKYER: Thank you.

24 Is there anyone else that wishes to comment.

25 Are there further questions from Members.

26 SENATOR HUGHES: Is that form dated?

27 CHAIRMAN LOCKYER: It's 9 of '94.

28 SENATOR HUGHES: Do you change the form yearly?

1 MR. BISHOP: It's not on a regular basis. It's
2 not like we do it on a regular -- at least to my knowledge, that
3 we do it on some periodic basis.

4 SENATOR HUGHES: Is it conceivable that this form
5 could have been used just the day before you got to your job?

6 MR. BISHOP: Yes.

7 SENATOR HUGHES: And might still be used by some
8 in your operation. How do you control it?

9 MR. BISHOP: I hope not.

10 SENATOR HUGHES: How do you control it? How do
11 you know?

12 MR. BISHOP: Well, I've had discussions with my
13 staff about it in the past, about our policy with respect to
14 whether or not a pending action would preclude our taking action
15 on an RFA.

16 SENATOR HUGHES: Most agencies date their forms
17 and revise them. Do you date and revise your forms in the
18 Department?

19 MR. BISHOP: Off-hand, I couldn't tell you
20 whether we do that. We have a lot of forms, and whether it's
21 done on all our forms, I don't know.

22 SENATOR HUGHES: Are you going to find out?
23 Wouldn't you be curious?

24 MR. BISHOP: I will find out. I am curious now.
25 I will find out.

26 CHAIRMAN LOCKYER: Let me ask about the policy.

27 A request for assistance comes into you. I
28 understand your diligence about respecting the law that makes

1 those documents confidential that are accumulated pursuant to
2 the RFA.

3 Is there some reason why they shouldn't be
4 accessible to the complaining party? Isn't the confidentiality
5 rule meant to protect them from undue public exposure?

6 MR. BISHOP: Well, I think there's that.

7 I think there's also, you know, we don't always
8 find that the plan is in violation. Maybe we want to pursue a
9 separate civil action, and frankly, our findings may hurt or
10 help them, and we don't want to prejudice their rights in that
11 regard.

12 CHAIRMAN LOCKYER: I'm not sure that your
13 providing them to the client would bring any prejudice on their
14 civil action.

15 MR. BISHOP: Well, if we found that the plan had
16 complied with the law, I think if I were the defendant's
17 counsel, I would be pretty happy to have a finding by the
18 regulator of the plan that there had not been a violation.

19 SENATOR BRULTE: Let me just go back to that.

20 I thought you had stated before that that's not a
21 decision of the agency. This is statute, and you mentioned
22 Supreme Court.

23 CHAIRMAN LOCKYER: Well, it's both, but there's a
24 statutory provision that closes these records.

25 MR. BISHOP: That's with respect to the
26 enforcement records, yes.

27 And we also would end up testifying, I think, in
28 a large number of cases if we were not immunized from being

1 called in, because we would be, I think, attractive expert
2 witnesses.

3 CHAIRMAN LOCKYER: We may need to think about
4 this.

5 SENATOR BRULTE: To the extent that we're
6 disadvantaging people because of that privacy issue, you have no
7 control over that; do you?

8 MR. BISHOP: No.

9 SENATOR BRULTE: If it's statutory, last time I
10 checked, you don't have a vote around here.

11 CHAIRMAN LOCKYER: They're prohibited by the law
12 from releasing those records, and it's various points you've
13 heard about how it may or may not help or hurt someone to make
14 records public.

15 Okay, did you want to add anything? You're
16 entitled to the condemned's last request or summation, whatever
17 you want to call it, Mr. Bishop.

18 What I think we'll do is not vote tonight. Leave
19 the record open. We still have 16 days, but leave the record
20 open so that if there's other people that are provoked to
21 comment because they watched it on Cal Span or something, we'll
22 have the benefit of any further comment and an opportunity to
23 talk with the administration some about these issues.

24 But I want to make sure you have chance to
25 conclude if you have anything that you'd wish to add.

26 MR. BISHOP: Given the lateness of the hour, I'd
27 just like to let everybody go home.

28 CHAIRMAN LOCKYER: Probably a prudent way to

1 conclude. Thank you very much.

2 MR. BISHOP: Thank you.

3 CHAIRMAN LOCKYER: I would expect this to be on
4 next Monday's agenda.

5 SENATOR BRULTE: Senator, consistent with what we
6 did with Mr. Alarcon, is it your intent that we're not going to
7 take any more public hearing, and they can just add to the
8 record in writing?

9 CHAIRMAN LOCKYER: Well, actually with
10 Mr. Alarcon there were a couple who did come that wanted to make
11 a public comment and did. We try to keep that to a minimum, if
12 we can. It just depends on what comes up.

13 Thanks, Mr. Bishop.

14 MR. BISHOP: Thank you.

15 [Thereupon. This portion of the
16 Senate Rules Committee hearing was
17 terminated at approximately 8:30 P.M.]

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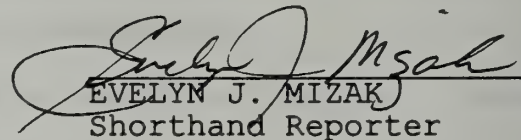
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